



TIGARD CITY COUNCIL  
MEETING

AUGUST 23, 2005 6:30 p.m.

TIGARD CITY HALL  
13125 SW HALL BLVD  
TIGARD, OR 97223



PUBLIC NOTICE:

Anyone wishing to speak on an agenda item should sign on the appropriate sign-up sheet(s). If no sheet is available, ask to be recognized by the Mayor at the beginning of that agenda item. Citizen Communication items are asked to be two minutes or less. Longer matters can be set for a future Agenda by contacting either the Mayor or the City Manager.

Times noted are estimated; it is recommended that persons interested in testifying be present by 7:15 p.m. to sign in on the testimony sign-in sheet. Business agenda items can be heard in any order after 7:30 p.m.

Assistive Listening Devices are available for persons with impaired hearing and should be scheduled for Council meetings by noon on the Monday prior to the Council meeting. Please call 503-639-4171, ext. 2410 (voice) or 503-684-2772 (TDD - Telecommunications Devices for the Deaf).

Upon request, the City will also endeavor to arrange for the following services:

- Qualified sign language interpreters for persons with speech or hearing impairments; and
- Qualified bilingual interpreters.

Since these services must be scheduled with outside service providers, it is important to allow as much lead time as possible. Please notify the City of your need by 5:00 p.m. on the Thursday preceding the meeting by calling: 503-639-4171, ext. 2410 (voice) or 503-684-2772 (TDD - Telecommunications Devices for the Deaf).

SEE ATTACHED AGENDA

**A G E N D A**  
**TIGARD CITY COUNCIL MEETING**  
**AUGUST 23, 2005**

6:30 PM

- **STUDY SESSION**

- > **REVIEW THE SCOPE OF SERVICES FOR THE CITY ATTORNEY**
  - Administration Staff
- > **MEASURE 37 TRAINING**
  - City Attorney

- **EXECUTIVE SESSION:** The Tigard City Council will go into Executive Session to consider employment of a public officer, employee, staff member or individual agent, to discuss real property transaction negotiations and to consult with counsel about current or potential litigation under ORS 192.660(2)(a)(e) and (h). All discussions are confidential and those present may disclose nothing from the Session. Representatives of the news media are allowed to attend Executive Sessions, as provided by ORS 192.660(4), but must not disclose any information discussed. No Executive Session may be held for the purpose of taking any final action or making any final decision. Executive Sessions are closed to the public.

7:30 PM

- 1. **BUSINESS MEETING**

- 1.1 Call to Order - City Council & Local Contract Review Board
- 1.2 Roll Call
- 1.3 Pledge of Allegiance
- 1.4 Council Communications & Liaison Reports
- 1.5 Call to Council and Staff for Non-Agenda Items

- 2. **PROCLAMATIONS**

- Mayor Dirksen
- 2.1 Proclaim September, 2005 as National Alcohol and Drug Addiction Recovery Month
- 2.2 Proclaim September 16, 2005 as Stepfamily Day

3. CITIZEN COMMUNICATION (Two Minutes or Less, Please)
  - Follow-up to Previous Citizen Communication
  
4. CONSENT AGENDA: These items are considered to be routine and may be enacted in one motion without separate discussion. Anyone may request that an item be removed by motion for discussion and separate action. Motion to:
  - 4.1 Approve Council Minutes for July 26, 2005
  - 4.2 Adopt a Resolution Appointing Members to the City Center Advisory Committee – Resolution No. 05 - \_\_\_\_\_
  - 4.3 Withdraw the Wall Street Railroad Crossing Application
  - 4.4 Adopt a Resolution Authorizing the MTIP Funding for the Greenburg Road Project to Be Held in Reserve for a Future City Project – Resolution No. 05 - \_\_\_\_\_
  - *Consent Agenda - Items Removed for Separate Discussion: Any items requested to be removed from the Consent Agenda for separate discussion will be considered immediately after the Council has voted on those items which do not need discussion.*
  
5. INTRODUCTION OF NEW TIGARD CHAMBER OF COMMERCE EXECUTIVE DIRECTOR JEREMY MONLUX AND PRESIDENT PAM BROWN
  - a. Staff Report: Police Staff
  - b. Council Discussion
  
6. CONSIDER A RESOLUTION ADOPTING GUIDELINES TO USE IN THE EVALUATION OF THE LOCATION AND ACQUISITION OF PARK AND GREENWAY PROPERTIES
  - a. Staff Report: Public Works Staff
  - b. Council Discussion
  - c. Council Consideration: Resolution No. 05 - \_\_\_\_\_

7. UPDATE ON LIBRARY OPERATIONS

- a. Staff Report: Library Staff
- b. Council Discussion

8. *Set Over from the August 9, 2005, City Council meeting –*

CONSIDERATION OF THE FINAL ORDER REGARDING THE APPEAL OF  
CONDITIONAL USE PERMIT FOR THE TIGARD FIRST BAPTIST CHURCH  
EXPANSION

**ITEM ON APPEAL:** On April 25<sup>th</sup>, 2005 the Tigard Hearing's Officer held a public hearing to consider an application for conditional use approval to construct a 22,500 square foot expansion of the existing church and associated parking in three phases. As part of Phase 2, the applicant proposed to relocate the existing driveway on SW Gaarde Street. The Hearing Officer adopted findings approving the Conditional Use Permit and Sensitive Lands Reviews and denied the requested Adjustment to the access spacing standards. An appeal was filed on May 25, 2005 by the owner and applicant, on the basis that the Hearing's Officer misconstrued the applicable law. More specifically, the appellant's argue that the Hearing Officer's decision failed to balance the approval criteria.

**LOCATION:** 11075 SW Gaarde Street; WCTM 2S103DC, Tax Lot 1100.

**ZONE:** R-3.5: Low-Density Residential District.

**REVIEW CRITERIA BEING APPEALED:** Community Development Code Chapters 18.370 and 18.705.

- a. Summation by Community Development Staff
- b. Council Discussion
- c. Council Consideration: Resolution No. 05 - \_\_\_\_\_

9. *Continued from the August 9, 2005, City Council meeting –*

CONSIDERATION OF THE FINAL ORDERS REGARDING THE ANNEXATION  
OF THE FOLLOWING FOUR PROPERTIES:

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FILE NO.:	ZONE CHANGE ANNEXATION (ZCA) 2004-00004
FILE TITLE:	MOUNTAIN VIEW ESTATES SUBDIVISION ANNEXATION
REQUEST:	The applicant is requesting to annex two (2) parcels of land containing 6.94 acres into the City of Tigard.
LOCATION:	12415 SW Beef Bend Road, WCTM 2S110CB, Tax Lot 500; and (No site address), WCTM 2S110CB, Tax Lot 100.

FILE NO.:	ZONE CHANGE ANNEXATION (ZCA) 2005-00001
FILE TITLE:	ARLINGTON HEIGHTS 3 SUBDIVISION ANNEXATION
REQUEST:	A request to annex three (3) parcels of land containing 16.97 acres into the City of Tigard.
LOCATION:	On the north side of SW Beef Bend Road and the southern terminus of SW Summerview Drive. WCTM 2S109DA, Tax Lot 2100; and 2S110CB, Tax Lots 600 and 700.
FILE NO.:	ZONE CHANGE ANNEXATION (ZCA) 2005-00002
FILE TITLE:	WILSON RIDGE SUBDIVISION ANNEXATION
REQUEST:	A request to annex two (2) parcels of land containing 2.68 acres into the City of Tigard.
LOCATION:	13350 and 13400 SW Bull Mountain Road; WCTM 2S109AC, Tax Lots 100 and 200.
FILE NO.:	ZONE CHANGE ANNEXATION (ZCA) 2005-00003
FILE TITLE:	ALBERTA RIDER SCHOOL/SUMMIT RIDGE SUBDIVISION ANNEXATION
REQUEST:	Annexation of 56 parcels containing approximately 20.75 acres into the City of Tigard.
LOCATION:	<u>Alberta Rider School:</u> WCTM 2S109AC, Tax Lot 2100 and 2S109AD, Tax Lot 1300; and <u>Remaining Portions of Summit Ridge Subdivision:</u> WCTM 2S109DA, Tax Lots 8500, 8600, 8700, 8800, 9400, 9500, 9600, 9700, 9800, 9900, 10000, 10100, 10200, 10300, 11500, 11600, 11700, 11800, 11900, 12000, 12100, 12200, 12300, 12400, 12500, 12600, 12700, 12800, 12900, 13000, 13400 and 13500, and WCTM 2S109DB, Tax Lots 1000, 1900, 2100, 2200, 2300, 2400, 2500, 2600, 2700, 2800, 2900, 3000, 3100, 3200, 3300, 3400, 3500, 3600, 3700, 3800, 3900 and 4000.

**ZONING OF ALL PARCELS:** R-7: Medium-Density Residential District. The R-7 zoning district is designed to accommodate attached single-family homes, detached single-family homes with or without accessory residential units, at a minimum lot size of 5,000 square feet, and duplexes, at a minimum lot size of 10,000 square feet. Mobile home parks and subdivisions are also permitted outright. Some civic and institutional uses are also permitted conditionally.

**APPLICABLE REVIEW CRITERIA:** The approval standards for annexations are set out in Community Development Code Chapters 18.320 and 18.390, Comprehensive Plan Policies 2 and 10; ORS Chapter 222; and Metro Code Chapter 3.09.

- a. Summation by Community Development Staff
- b. Council Discussion
- c. Council Consideration:
  - Ordinance No. 05 - \_\_\_\_\_ (Mountain Estates Subdivision Annexation)
  - Ordinance No. 05 - \_\_\_\_\_ (Arlington Heights 3 Subdivision Annexation)
  - Ordinance No. 05 - \_\_\_\_\_ (Wilson Ridge Subdivision Annexation)
  - Ordinance No. 05 - \_\_\_\_\_ (Alberta Rider School/Summit Ridge Annexation)

## 10. COUNCIL LIAISON REPORTS

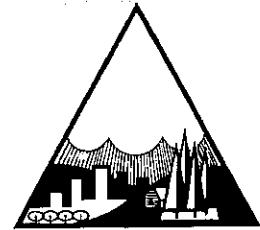
## 11. NON AGENDA ITEMS

12. **EXECUTIVE SESSION:** The Tigard City Council may go into Executive Session. If an Executive Session is called to order, the appropriate ORS citation will be announced identifying the applicable statute. All discussions are confidential and those present may disclose nothing from the Session. Representatives of the news media are allowed to attend Executive Sessions, as provided by ORS 192.660(4), but must not disclose any information discussed. No Executive Session may be held for the purpose of taking any final action or making any final decision. Executive Sessions are closed to the public.

## 13. ADJOURNMENT

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## MEMORANDUM



TO: Mayor and City Council Members

FROM: Joe Barrett, Buyer *JB*

RE: Draft Request for Proposal for Legal Services

DATE: August 12, 2005

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The City's current contract for general legal services expires on December 31 of this year and the City's agreement for labor attorney services also expires this year. In preparation for the City to advertise for proposals, Purchasing has prepared a draft Request for Proposal (RFP) for these services using a combined approach. The City plans to solicit for both services in the same solicitation while reserving the right to hire either one firm for both services or to award contracts to two different firms for each respective service.

Staff is requesting your input on the general legal services Scope of Services which is in the attached draft of the RFP. A pull-out copy of the Scope of Services for this section has also been attached for your convenience. Human Resources is working on the Scope of Services for labor attorney services. This item is on the agenda for the August 23, 2005 Study Session and staff will be requesting your input at that time.

With your input, I will be working with Liz Newton on finalizing the RFP. It is staff's intent to have the RFP sent out on September 1, 2005 and to request all responses be submitted by September 26, 2005. Staff intends to bring the ranked responses to the Council at the Study Session on October 11, 2005 and schedule any presentations or interviews with the leading firms at the Council's discretion.

If you'd like to discuss any aspect of the RFP, please feel free to contact me or Liz Newton with your individual questions. Thank you in advance for your input.

**REQUEST FOR PROPOSAL**  
**ATTORNEY SERVICES – GENERAL & LABOR**  
**SCOPE OF SERVICES – GENERAL SERVICES**

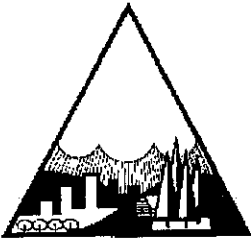
**A. GENERAL ATTORNEY SERVICES**

Awarded Counsel will be responsible for City legal representation as authorized by the City Council. Authorization to perform specific tasks will come from the Mayor, City Council, City Manager or other persons directly authorized by the Mayor, City Council or the City Manager. Awarded Counsel shall appoint an attorney to act as lead attorney. The lead attorney could possibly be required to attend all City Council meetings depending on the content or actions taking place. In the event that the lead attorney is not available for a meeting, Awarded Counsel shall further designate a backup lead attorney to attend the meetings. Legal Counsel will advise the City Manager with appropriate notice if neither the lead attorney nor the backup lead attorney is available for a City Council meeting.

1. Unless otherwise specified by the Mayor, City Council, the Awarded Counsel will be responsible for:
  - a. Legal aspects of general administration of City business, including preparing and providing legal opinions, assist with establishment of correct procedures, drafting and reviewing ordinances, resolutions, contracts, orders, agreements, and other legal documents, and related tasks needed to support City personnel, Mayor, Council, and City Manager.
  - b. Providing sound legal direction on all forms of City business, including, but not limited to, the following:
    - 1) Real Property Transactions
    - 2) Public Financing
    - 3) Land Use Law
    - 4) Local Budget Law
    - 5) Codification of Ordinances
    - 6) Election Laws
    - 7) Open Meeting Laws
    - 8) Public Record Laws
    - 9) Public Contracting
    - 10) Franchise Law (i.e. Solid Waste)
    - 11) Annexation Law
    - 12) Public/Private Partnerships
    - 13) Oregon Revised Statutes
    - 14) Public Meeting Law
    - 15) General Business Laws
  - c. Training of nonlegal personnel in the performance of legally related tasks in order to reduce legal expenses.
  - d. Regular attendance at City Council meetings and attendance at other municipal meetings on request.



- e. Represent the City during litigation or Municipal Court prosecution.
  - f. Review City Council packets and provide advice prior to meetings. Review Planning Commission packets when requested and provide timely advice prior to meetings.
  - g. Notify City of changes in state and federal laws that require changes in city codes, ordinances, regulations or policy. Work with city staff to provide appropriate amendments to city codes, ordinance, regulations or policies to remain in compliance with applicable laws.
2. Legal activities such as complex litigation and special project assignments which fall outside of the above categories, and which would include costs exceeding the projections of the City's budget for legal services, must be authorized by the City Council. Awarded Counsel and the City Manager will regularly review the level of expenditures on legal services and will prioritize projects in order to stay within the budgeted amounts.
  3. The Awarded Counsel will coordinate with the City Manager and department heads, but within the chain of command shall report directly to the City Council. In this regard, in the event a conflict develops between the Council and City Manager, the Awarded Counsel will represent the Council but will notify the City Manager at first knowledge of a conflict.
  4. The City reserves the right in appropriate situations to retain separate outside counsel. It is recognized that the City presently utilizes other law firms to provide representation in personnel issues, labor relations, and water-related matters (i.e., water rights, water supply).



## ***CITY OF TIGARD, OREGON***

### **REQUEST FOR PROPOSAL**

#### **Attorney Services – General & Labor**

**DATE DUE:** (Month - Day - Year)  
**TIME DUE:** 2:00 PM

Envelope(s) shall be sealed and marked with Project Title.  
Respondents must submit one (1) original and three (3) complete copies of their RFP response.

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#### **Direct RFP Questions To:**

Joe Barrett, Buyer  
City of Tigard, Finance  
Phone: 503-639-4171, Ext. 2477  
Fax: (503) 639-1471  
Email: [joseph@ci.tigard.or.us](mailto:joseph@ci.tigard.or.us)

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#### **SUBMIT PROPOSAL TO:**

*Joe Barrett, Buyer  
City of Tigard – Information Desk  
13125 SW Hall Blvd.  
Tigard, Oregon 97223*

**PUBLIC NOTICE**  
**Request for Proposal**  
**Attorney Services – General & Labor**

The City of Tigard is currently seeking proposals from attorney firms qualified to provide general and/or labor attorney services to the City. Firms are invited to submit a proposal outlining their experience and qualifications in performing work directly related to the services required as detailed in the Request for Proposal packet.

Sealed proposals will be received until (Month - Day - Year - 00:00 AM/PM), to the attention of Joe Barrett, Buyer, at the Tigard City Hall Information Desk located at 13125 SW Hall Blvd., Tigard, Oregon 97223. There will be no formal opening of the proposals. Facsimile and electronic proposals will not be accepted. Proposals will not be accepted after the stated opening date and time. Late proposals will be returned to the vendor unopened.

Proposal packets may be downloaded from [www.ci.tigard.or.us](http://www.ci.tigard.or.us) or may be obtained at the Tigard City Hall Information Desk at 13125 SW Hall Blvd., Tigard, Oregon 97223 or by calling Joe Barrett, Buyer at (503) 718-2477.

Proposers are required to certify non-discrimination in employment practices, and identify resident status as defined in ORS 279.029. Pre-qualification of proposer is not required. All proposers are required to comply with the provisions of Oregon Revised Statutes and Local Contract Review Board (LCRB) Policy.

The City of Tigard reserves the right to:

1. Reject any or all proposal not in compliance with public bidding procedures;
2. Postpone award of the contract for a period not to exceed sixty (60) days from date of proposal opening;
3. Waive informalities in the proposals; and
4. Select the proposal which appears to be in the best interest of the City.

PUBLISHED:           Daily Journal of Commerce  
DATE:                 (Month - Day - Year)

## TABLE OF CONTENTS

	<b>TITLE</b>	<b>PAGE</b>
	Title Page	1
	Public Notice	2
	Table of Contents	3
<b><u>Sections</u></b>		
SECTION 1	Introduction	4
SECTION 2	Proposer's Special Instructions	4
SECTION 3	Background	7
SECTION 4	Scope of Services	7
SECTION 5	Proposal Content and Format	10
SECTION 6	Proposal Evaluation Procedures	12
SECTION 7	Proposal Certification	15
SECTION 8	Signature Page	16
<b><u>Attachments</u></b>		
ATTACHMENT A	Acknowledgement of Addendum	17
ATTACHMENT B	Statement of Proposal	18
ATTACHMENT C	City of Tigard Attorney Services Agreement	19

## SECTION 1 INTRODUCTION

The City of Tigard is seeking proposals from attorney firms qualified to provide general and/or labor attorney services to the City. Firms are invited to submit a proposal outlining their experience and qualifications in performing work directly related to the services required as detailed in the Request for Proposal packet.

## SECTION 2 PROPOSER'S SPECIAL INSTRUCTIONS

**A. PROPOSED TIMELINES**

<u>(Day of Week, Month - Day - Year)</u>	Advertisement and Release of Proposals
<u>(Time, Day of Week, Month - Day - Year)</u>	Deadline for Submission of Proposals
<u>(Month - Day - Year)</u>	Interviews (if necessary)
<u>(Month - Day - Year)</u>	Local Contract Review Board Award
<u>(Month - Day - Year)</u>	Commencement of Services

***NOTE: The City reserves the right to modify this schedule at the City's discretion. Proper notification of changes in the will be made to all interested parties.***

**B. GENERAL**

By submitting a proposal, the Proposer certifies that the Proposal has been arrived at independently and has been submitted without any collusion designed to limit competition.

**C. PROPOSAL SUBMITTAL**

**The Proposal and all amendments must be signed and submitted no later than (Month - Day - Year - 00:00 AM/PM), to the address below. Each proposal must be submitted in a sealed envelope and designated with proposal title. To assure that your proposal receives priority treatment, please mark as follows.**

**Attorney Services – General & Labor**

(Due Month - Day - Year) – 2:00 PM  
City of Tigard – City Hall Information Desk  
Joe Barrett, Buyer  
13125 SW Hall Blvd.  
Tigard, Oregon 97223

**Proposer shall put their name and address on the outside of the envelope.** It is the Proposer's responsibility to ensure that proposals are received prior to the stated closing time. The City shall not be responsible for the proper identification and handling of any proposals submitted incorrectly. Late proposals, late modification or late withdrawals shall not be considered accepted after the stated bid opening date and time and shall be returned unopened. Facsimile and electronic (email) proposals will not be accepted.

**D. PROTEST OF SCOPE OF WORK OR TERMS**

A proposer who believes any details in the scope of work or terms detailed in the proposal packet and sample contract are unnecessarily restrictive or limit competition may submit a protest in writing, to the Purchasing Office. A protest may be submitted via facsimile. Any such protest shall include the reasons for the protest and shall detail any proposed changes to the scope of work or terms. The Purchasing Office shall respond to any protest and, if necessary, shall issue any appropriate revisions, substitutions, or clarification via addenda to all interested Proposers.

To be considered, protests must be received at least five- (5) days before the proposal closing date. The City shall not consider any protest against award due to the content of proposal scope of work or contract terms submitted after the established protest deadline. All protests should be directed to Joe Barrett, Buyer and be marked as follows:

**RFP Specification/Term Protest**

RFP Name and Closing Date

City of Tigard

Joe Barrett, Buyer

13125 SW Hall Blvd.

Tigard, Oregon 97223

If a protest is received in accordance with section above, the proposal opening date may be extended if necessary to allow consideration of the protest and issuance of any necessary addenda to the proposal documents.

**E. PROPOSAL SUBMISSION AND SIGNING**

All requested forms and attachments (Signature Page, Acknowledgment Addendum, Statement of Proposal, etc.) must be submitted with the Proposal and in the required format. The submission and signing of a proposal shall indicate the intention of the firm to adhere to the provisions described in this RFP.

**F. COST OF PREPARING A PROPOSAL**

The RFP does not commit the City to paying any costs incurred by Proposer in the submission or presentation of a proposal, or in making the necessary studies for the preparation thereof.

**G. INTERPRETATIONS AND ADDENDA**

All questions regarding this project proposal shall be directed to Joe Barrett, Buyer. If necessary, interpretations or clarifications in response to such questions will be made by issuance of an "Addendum" to all prospective Proposers within a reasonable time prior to proposal closing, but in no case less than 72 hours before the proposal closing. If an addendum is necessary after that time, the City, at its discretion, can extend the closing date.

Any Addendum issued, as a result of any change in the RFP, must be acknowledged by submitting the "Acknowledgment of Addendum" with proposal. Only questions answered

by formal written addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

**H. BUSINESS TAX/FEDERAL TAX ID REQUIRED**

The City of Tigard Business Tax is required. Chapter 5.4 of the Tigard Municipal Code states any business doing business in the City of Tigard shall pay a City of Tigard Business Tax. No contracts shall be signed prior to the obtaining of the City of Tigard Business Tax. Upon award of proposal, contractor shall complete a W-9 form for the City.

**I. CONTRACT ADMINISTRATOR**

The Contract Administrator will be Liz Newton, Assistant to the City Manager, who can be reached by phone at (503) 639-4171, ext. 2414 or by email at [liz@ci.tigard.or.us](mailto:liz@ci.tigard.or.us).

**J. PROPOSAL VALIDITY PERIOD**

Each proposal shall be irrevocable for a period of sixty (60) days from the Proposal Opening Date.

**K. FORM OF CONTRACT**

A copy of the City's standard attorney services agreement, which the City expects the successful firm or individual to execute, is included as "Attachment C". The contract will incorporate the terms and conditions from this RFP document and the successful proposer's response documents. Firms taking exception to any of the contract terms shall submit a protest or request for change in accordance with Section 2(D) "Protest of Scope of Work or Terms" or their exceptions will be deemed waived.

**L. TERM OF CONTRACT**

The term of the contract shall be a period of two (2) years with the option to renew for three (3) additional one (1) year periods. The total term of the contract cannot exceed five (5) years.

**M. TERMINATION**

The contract may be terminated by mutual consent of both parties or by the City at its discretion with a 30 days' written notice. If the agreement is so terminated, Contractor shall be paid in accordance with the terms of the agreement.

**N. NON-COLLUSION**

Proposer certifies that this proposal had been arrived at independently and has been submitted without collusion designed to limit independent bidding or competition.

**O. PUBLIC RECORD**

All bid material submitted by bidder shall become the property of the City and is public record unless otherwise specified. A bid that contains any information that is considered trade secret under ORS 192.501(2) should be segregated and clearly identified as such. This information will be kept confidential and shall not be disclosed except in accordance

with the Oregon Public Records Law, ORS 192. The above restrictions may not include cost or price information, which must be open to the public.

### **SECTION 3 BACKGROUND**

Tigard was incorporated in 1961 and today, is a friendly, livable and affordable community located just minutes southwest of Portland in Washington County. The 11th largest city in the State of Oregon, approximately 45,500 residents make their home in this centrally located community in Washington County, 10 miles southwest of downtown Portland, just minutes from I-5, Highway 217 and Highway 99W. The City is governed by a City Council with the City Manager responsible for the daily administration of all City functions. This includes general management, personnel administration, labor relations, risk and informational technology, volunteer coordination, and community relations. As a community, Tigard strives to manage this growth and blend the amenities of a modern city with the friendliness and community spirit of a small town.

The City's "open door" policy encourages citizens to attend weekly city council meetings and observe the four-member council and mayor make important decisions. Tigard is a community building for today and its future. Local government and school leaders, citizen groups, businesses and individuals work hard to build upon Tigard's significant community attributes. The City promotes citizen participation through Citizen Involvement Teams that represent the community's four geographic areas. The teams allow citizens to become part of the decision-making process.

The City is currently seeking to retain the services of one or more firms to provide both general attorney services and labor attorney services. The City is reserving the right to offer both services to one firm or offer general counsel services to one firm and labor counsel services separately to another firm.. The firm or firms that are awarded a contract under this RFP will work closely with City staff, Mayor, and City Councilors, on various City issues including, but not limited to: providing legal aspects of general administration of City business, including preparing and providing legal opinions, assist with establishment of correct procedures, drafting and reviewing ordinances, resolutions, contracts, orders, agreements, and other legal documents; provide necessary collective bargaining assistance to the City as needed; and any other aspects of legal needs as detailed in this RFP packet.

### **SECTION 4 SCOPE OF SERVICES**

Tigard is seeking both general attorney services and labor attorney services. The City is soliciting these services together while reserving the right to either award both services to one firm or to two different firms. Firms submitting proposals may submit on both services or on each individual service. There will be no preference given by the City with regards to which service, or combination of services, for which a firm submits a proposal response. Firms will be scored individually for both services if submitting the combination option. The Scope of Services for each requested service is as follows:



**A. GENERAL ATTORNEY SERVICES**

Awarded Counsel will be responsible for City legal representation as authorized by the City Council. Authorization to perform specific tasks will come from the Mayor, City Council, City Manager or other persons directly authorized by the Mayor, City Council or the City Manager. Awarded Counsel shall appoint an attorney to act as lead attorney. The lead attorney could possibly be required to attend all City Council meetings depending on the content or actions taking place. In the event that the lead attorney is not available for a meeting, Awarded Counsel shall further designate a backup lead attorney to attend the meetings. Legal Counsel will advise the City Manager with appropriate notice if neither the lead attorney nor the backup lead attorney is available for a City Council meeting.

1. Unless otherwise specified by the Mayor, City Council, the Awarded Counsel will be responsible for:
  - a. Legal aspects of general administration of City business, including preparing and providing legal opinions, assist with establishment of correct procedures, drafting and reviewing ordinances, resolutions, contracts, orders, agreements, and other legal documents, and related tasks needed to support City personnel, Mayor, Council, and City Manager.
  - b. Providing sound legal direction on all forms of City business, including, but not limited to, the following:
    - 1) Real Property Transactions
    - 2) Public Financing
    - 3) Land Use Law
    - 4) Local Budget Law
    - 5) Codification of Ordinances
    - 6) Election Laws
    - 7) Open Meeting Laws
    - 8) Public Record Laws
    - 9) Public Contracting
    - 10) Franchise Law (i.e. Solid Waste)
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  - d. Regular attendance at City Council meetings and attendance at other municipal meetings on request.
  - e. Represent the City during litigation or Municipal Court prosecution.
  - f. Review City Council packets and provide advice prior to meetings. Review Planning Commission packets when requested and provide timely advice prior to meetings.

- ## B. LABOR ATTORNEY SERVICES

1. Contract negotiations for the following City collective bargaining units:

- 2005 RFP – General & Labor Attorney

4. Awarded Counsel shall work directly with the Human Resources Department in the performance of all contractual duties.

## SECTION 5 PROPOSAL CONTENT AND FORMAT

### A. **FORMAT**

To provide a degree of consistency in review of the written proposals, firms are requested to prepare their proposals in the standard format specified below.

1. **Title Page**

Proposer should identify the RFP subject, name and title of contact person, address, telephone number, fax number, email address and date of submission.

2. **Transmittal Letter**

The transmittal letter should be not more than two (2) pages long and should include as a minimum the following:

- a. A brief statement of the Proposer's understanding of the project and services to be performed;
- b. A positive commitment to perform the services within the time period specified, starting and completing the project within the deadlines stated in this RFP; and the names of persons authorized to represent the Proposer, their title, address and telephone number (if different from the individual who signs the transmittal letter).

3. **Table of Contents**

The table of contents should include a clear and complete identification by section and page number of the materials submitted.

4. **Firm Qualifications & Experience**

- a. Background of the firm. Provide a detailed description of the law firm, including historical background, number and location of firm offices, number of attorneys, and major areas of practice.
- b. Qualifications of the firm in performing this type of work. This should include examples of related experience and references for similar studies and projects. Firms should detail experience in, but not limited to, the following:

- 1) Real Property Transactions
- 2) Public Financing
- 3) Land Use Law
- 4) Local Budget Law
- 5) Codification of Ordinances
- 6) Election Laws
- 7) Open Meeting Laws

- 8) Public Record Laws
- 9) Public Contracting
- 10) Franchise Law (i.e. Solid Waste)
- 11) Annexation Law
- 12) Public/Private Partnerships
- 13) Oregon Revised Statutes
- 14) Public Meeting Law
- 15) General Business Laws

5. **Team Member Qualifications & Experience**

Project team and the team member's individual qualifications. Provide details in regards to the area or areas of practice in which each Team Member is qualified and the jurisdictions in which they practice and are licensed. Provide a detailed résumé and biographical sketch describing the education, and relevant experience of each Team Member.

6. **Project Approach**

- a. Submit a work plan to accomplish the scope of work defined in the section entitled "Scope and Schedule of Work" in this RFP. The work plan should include time estimates (in hours) for each significant segment of the project and the staff level to be assigned. Where possible, individual staff members should be named and their titles provided. The planned use of specialists (if any) should be described.
- b. Indicate the extent to which City personnel would be expected to contribute to the project work effort.

7. **Compensation**

Proposers shall detail the hourly rates to be charged for partners, senior associates, associates, paralegals, legal assistants, clerical, and any other support staff. In addition, any potential additional cost, i.e. travel, per diem, etc., must be detailed in the proposal response.

8. **Presentation/Interview**

This will provide an opportunity to clarify or elaborate on the firm's proposal, but will not, in any way provide an opportunity to change any fee amount originally proposed. The City will schedule the time and location of these presentations and notify the selected firms. **Note: It is likely that not all firms submitting a response will be selected for the presentation/interview phase.**

B. **ADDITIONAL SERVICES**

Provide a brief description of any other services that your firm could provide the City and an approximation of the hourly charge for each service of this type. Such services would be contracted for on an "as needed" basis, to be provided and billed for separately.

C. **ADDITIONAL INFORMATION**

Please provide any other information you feel would help the Selection Committee evaluate your firm for this project.

D. **REFERENCES**

Please list three (3) references as follows:

<u>Company</u>	<u>Contact Person</u>	<u>Title</u>	<u>Phone</u>	<u>Email</u>
----------------	-----------------------	--------------	--------------	--------------

E. **DISPUTES**

Should any doubt or difference of opinion arise between the City and a Proposer as to the items to be furnished hereunder or the interpretation of the provisions of this RFP, the decision of the City shall be final and binding upon all parties.

F. **CITY PERSONNEL**

No Officer, agent, consultant or employee of the City shall be permitted any interest in the contract.

**SECTION 6  
PROPOSAL EVALUATION PROCEDURES**

A. **SELECTION AND EVALUATION PROCESS**

A Selection Committee assembled by the City will review the written proposals. Proposals will be evaluated to determine which ones best meet the needs of the City. After meeting the mandatory requirements, the proposals will be evaluated on both their technical and fee aspects.

The City is seeking both general attorney services and labor attorney services. The City is soliciting these services together while reserving the right to either award both services to one firm or to two different firms. Firms submitting proposals may submit on both services or on each individual service. There will be no preference given by the City with regards to which service, or combination of services, for which a firm submits a proposal response. Firms will be scored individually for both services if submitting the combination option.

Proposals will be evaluated in accordance with the following:

- |    |   |                         |
|----|---|-------------------------|
| 1. | <b><u>Completed Proposal submitted on time</u></b>  | <b><u>Pass/Fail</u></b> |
| 2. | <b><u>An original plus three (3) copies of the complete proposal</u></b>  | <b><u>Pass/Fail</u></b> |
| 3. | <b><u>Transmittal letter</u></b>  | <b><u>Pass/Fail</u></b> |
| 4. | <b><u>Firm qualifications &amp; experience</u></b><br>The evaluation of the firm's qualifications as listed under Section 5 of this RFP Packet.   | <b><u>50 points</u></b> |
| 5. | <b><u>Project Team member qualifications &amp; experience</u></b><br>The evaluation of the project team members' qualifications based upon the information listed in the statement of team member qualifications detailed in Section 5. | <b><u>35 points</u></b> |

6. **Project understanding and approach** **50 points**  
An evaluation of the proposer's work plan and general understanding of the project as detailed in Section 5.
7. **Compensation** **40 points**  
The evaluation of the proposed compensation structure will consider the overall cost (fees plus out-of-pocket expenses), and the proposed hours and City assistance requested. All of these factors are important in evaluating the reasonableness of the fee and the Proposer's understanding of the requirements.
8. **Presentation/Interview** **25 points**  
An evaluation of the proposer's presentation/interview as detailed in Section 5. **Note:**  
**It is likely that not all firms submitting a response will be selected for the presentation/interview phase.**

**Total Evaluation Points 200 points**

**B. INVESTIGATION OF REFERENCES**

The City reserves the right to investigate references and the past performance of any proposer with respect to its successful performance of similar projects, compliance with specifications and contractual obligations, its completion or delivery of a project on schedule and its lawful payment of employees and workers.

**C. CLARIFICATION OF PROPOSALS**

The City reserves the right to obtain clarification of any point in a firm's proposal or to obtain additional information necessary to properly evaluate or particular proposal. Failure of a Proposer to respond to such a request for additional information or clarification could result in rejection of the firm's proposal.

**D. RESERVATION IN EVALUATION**

The Selection Committee reserves the right to either: (a) request "Best and Final Offers" from the two finalist firms and award to the lowest priced or (b) to reassess the proposals and award to the vendor determined to best meet the overall needs of the City.

**E. INTENT OF AWARD**

Upon review of the proposals submitted, the City may negotiate a scope of work and an attorney services agreement with one or more firms, or may select one or more firms for further consideration.

**F. PROTEST OF AWARD**

In accordance with the City's Model Public Contracting Rule 30.104, any adversely affected Proposer has fourteen (14) calendar days from the date of the written notice of award to file a written protest.

**G. PROPOSAL REJECTION**

The City reserves the right to:

1. Reject any or all proposals not in compliance with all public procedures and requirements;
2. Reject any proposal not meeting the specifications set forth herein;
3. Waive any or all irregularities in proposals submitted;
4. In the event two or more proposals shall be for the same amount for the same work, the City shall follow the provisions of LCRB 30.095 and Section 137-095 of the Oregon Attorney General's Model Public Contract Manual;
5. Reject all proposals;
6. Award any or all parts of any proposal; and
7. Request references and other data to determine responsiveness.

**SECTION 7  
PROPOSAL CERTIFICATIONS**

\*\*\*\*\*

**Non-discrimination Clause**

The Contractor agrees not to discriminate against any client, employee or applicant for employment or for services, because of race, color, religion, sex, national origin, handicap or age with regard to, but not limited to, the following: employment upgrading, demotion or transfer; recruitment or recruitment advertising; layoffs or termination; rates of pay or other forms of compensation; selection for training; rendition of services. It is further understood that any contractor who is in violation of this clause shall be barred from receiving awards of any purchase order from the City, unless a satisfactory showing is made that discriminatory practices have terminated and that a recurrence of such acts is unlikely.

Agreed by: \_\_\_\_\_

Firm Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\*\*\*\*\*

**Resident Certificate**

Please Check One:

☐ **Resident Vendor:** Vendor has paid unemployment taxes and income taxes in this state during the last twelve calendar months immediately preceding the submission of this proposal.

Or

☐ **Non-resident Vendor:** Vendor does not qualify under requirement stated above.  
(Please specify your state of residence: \_\_\_\_\_)

Officer's signature: \_\_\_\_\_

Type or print officer's name: \_\_\_\_\_



**SECTION 8  
SIGNATURE PAGE**

The undersigned proposes to perform all work as listed in the Specification section, for the price(s) stated; and that all articles supplied under any resultant contract will conform to the specifications herein,

The undersigned agrees to be bound by all applicable laws and regulations, the accompanying specifications and by City policies and regulations.

The undersigned, by submitting a proposal, represents that:

- A) The Proposer has read and understands the specifications.
- B) Failure to comply with the specifications or any terms of the Request for Proposal may disqualify the Proposer as being non-responsive.

The undersigned certifies that the proposal has been arrived at independently and has been submitted without any collusion designed to limit competition.

The undersigned certifies that all addenda to the specifications has been received and duly considered and that all costs associated with all addenda have been included in this proposal:

Addenda: No. \_\_\_\_\_ through No. \_\_\_\_\_ inclusive.

We therefore offer and make this proposal to furnish services at the price(s) indicated herein in fulfillment of the attached requirements and specifications of the City.

Name of firm: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Telephone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

By: \_\_\_\_\_ Date: \_\_\_\_\_  
*(Signature of Authorized Official. If partnership, signature of one partner.)*

Typed Name/Title: \_\_\_\_\_

If corporation, attest: \_\_\_\_\_  
*(Corporate officer)*

☐ Corporation

☐ Partnership

☐ Individual

Federal Tax Identification Number (TIN): \_\_\_\_\_

**ATTACHMENT A**  
**ACKNOWLEDGMENT OF ADDENDA**  
**City of Tigard, Oregon**  
**Request for Proposal**  
**Attorney Services – General & Labor**  
**Close: (Day of Week), (Month - Day - Year), 2:00 PM**

I/WE HAVE RECEIVED THE FOLLOWING ADDENDA:

*If none received, write "None Received"*

1. \_\_\_\_\_

3. \_\_\_\_\_

2. \_\_\_\_\_

4. \_\_\_\_\_

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Signature of Proposer*

\_\_\_\_\_  
*Title*

\_\_\_\_\_  
*Corporate Name*

**ATTACHMENT B  
STATEMENT OF PROPOSAL**

Name of Consultant: \_\_\_\_\_

Mailing Address: \_\_\_\_\_  
\_\_\_\_\_

Contact Person: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

accepts all the terms and conditions contained in the City of Tigard Request for Proposal for Attorney Services – General & Labor and the attached agreement for attorney services (Attachment C):

\_\_\_\_\_  
*Signature of authorized representative*

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Type or print name of authorized representative*

\_\_\_\_\_  
*Telephone Number*

\_\_\_\_\_  
*Type or print name of person(s) authorized to negotiate contracts*

\_\_\_\_\_  
*Telephone Number*

**REFERENCES**

\_\_\_\_\_  
*Reference #1*

\_\_\_\_\_  
*Telephone Number*

\_\_\_\_\_  
*Project Title*

\_\_\_\_\_  
*Contact Individual*

\_\_\_\_\_  
*Reference #2*

\_\_\_\_\_  
*Telephone Number*

\_\_\_\_\_  
*Project Title*

\_\_\_\_\_  
*Contact Individual*

\_\_\_\_\_  
*Reference #3*

\_\_\_\_\_  
*Telephone Number*

\_\_\_\_\_  
*Project Title*

\_\_\_\_\_  
*Contact Individual*

**ATTACHMENT C  
CITY OF TIGARD, OREGON  
ATTORNEY SERVICES CONTRACT**

This agreement made and entered into this (Day) day of (Month), (Year) by and between the City of Tigard, a municipal corporation of the State of Oregon, hereinafter called City, and (Awarded Firm) hereinafter called Legal Counsel.

**WITNESSETH**

WHEREAS, City has need for the services of an attorney firm with the particular training, ability, knowledge, and experience possessed by Legal Counsel; and

WHEREAS, City has determined that (Awarded Firm) is qualified and capable of performing the professional services as City does hereinafter require under those terms and conditions set forth;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

**1. LEGAL SERVICES TO BE PROVIDED**

Legal Counsel agrees to complete work, which is detailed in Exhibit "A" and by this reference made a part hereof.

**2. EFFECTIVE DATE AND DURATION**

This Agreement shall become effective beginning (Effective Date), and shall expire, unless otherwise terminated or extended, on (Expiration Date - 2 Years from Effective Date). This agreement may be extended at the agreement of both parties for three (3) additional one (1) year terms. In accordance with the City's Public Contracting Rules the total duration of this agreement may not exceed five (5) years.

**3. COMPENSATION**

**A.** City agrees to pay Legal Counsel in accordance with this section for performance of services described herein. Payment shall be based upon a detailed monthly billing showing work performed and identifying specific legal matters worked on.

**B. Hourly Rates**

The hourly rates shall be as follows:

Partners  
Sr. Associates  
Associates  
Paralegals  
Legal Assistants  
Clerical

The parties may by mutual agreement adjust these rates each contract year. Legal Counsel shall submit any proposed new rate structure in writing to the City for its review not less than 60 days prior to the new contract year.

- C. The direct cost for such items as long distance charges, messenger services, printing, mileage, copy charges ((cents) cents per page) and the like will be billed to City, with no markup or overhead charge added, except that mileage charges for trips between Legal Counsel's office and City offices shall not be charged to the City.
- D. Payment by City shall release City from any further obligation for payment to Legal Counsel, for services performed or expenses incurred as of the date of the statement of services. Payment shall not be considered acceptance or approval of any work or waiver of any defects therein.
- E. Payment will be made in installments based on Legal Counsel's invoice, subject to the approval of the City Manager or designee. Payment shall be made only for work actually completed as of the date of the invoice.
- F. The City certifies that sufficient funds are available and authorized for expenditure to finance costs of this contract.

4. **OWNERSHIP OF WORK PRODUCT**

City shall be the owner of and shall be entitled to possession of any and all work products of Legal Counsel which result from this Agreement, including any computations, plans, correspondence or pertinent data and information gathered by or computed by Legal Counsel prior to termination of this Agreement by Legal Counsel or upon completion of the work pursuant to this Agreement.

5. **ASSIGNMENT/DELEGATION**

Neither party shall assign, sublet or transfer any interest in or duty under this Agreement without the written consent of the other and not assignment shall be of any force or effect whatsoever unless and until the other party has so consented. If City agrees to assignment of tasks to a subcontractor, Legal Counsel shall be fully responsible for the acts or omissions of any subcontractors and of all persons employed by them, and neither the approval by City of any subcontractor nor anything contained herein shall be deemed to create any contractual relation between the subcontractor and City.

6. **STATUS OF LEGAL COUNSEL AS INDEPENDENT CONTRACTOR**

Legal Counsel certifies that:

- A. Legal Counsel acknowledges that for all purposes related to this Agreement, Legal Counsel is and shall be deemed to be an independent contractor as defined by ORS 670.700 and not an employee of City, shall not be entitled to benefits of any kind to which an employee of City is entitled and shall be solely responsible for all payments and taxes required by law. Furthermore, in the event that Legal

Counsel is found by a court of law or any administrative agency to be an employee of City for any purpose, City shall be entitled to offset compensation due, or to demand repayment of any amounts paid to Legal Counsel under the terms of this Agreement, to the full extent of any benefits or other remuneration Legal Counsel receives (from City or third party) as a result of said finding and to the full extent of any payments that City is required or make (to Legal Counsel or to a third party) as a result of said finding.

- B. The undersigned Legal Counsel hereby represents that no employee of the City, or any partnership or corporation in which a City employee has an interest, has or will receive any remuneration of any description from Legal Counsel, either directly or indirectly, in connection with the letting or performance of this Agreement, except as specifically declared in writing.
- C. Legal Counsel certifies that it currently has a City business license or will obtain one prior to delivering services under this Agreement.
- D. Legal Counsel is not an officer, employee, or agent of the City as those terms are used in ORS 30.265.

7. **INDEMNIFICATION**

City has relied upon the professional ability and training of Legal Counsel as a material inducement to enter into this Agreement. Legal Counsel warrants that all its work will be performed in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Legal Counsel's work by City shall not operate as a waiver or release.

Legal Counsel agrees to indemnify and defend the City, its officers, agents and employees and hold them harmless from any and all liability, causes of action, claims, losses, damages, judgments or other costs or expenses including attorney's fees and witness costs and (at both trial and appeal level, whether or not a trial or appeal ever takes place) that may be asserted by any person or entity which in any way arise from, during or in connection with the performance of the work described in this contract, except liability arising out of the sole negligence of the City and its employees. Such indemnification shall also cover claims brought against the City under state or federal worker's compensation laws. If any aspect of this indemnity shall be found to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this indemnification.

8. **INSURANCE**

- A. Legal Counsel, and its subcontractors, shall maintain insurance acceptable to City in full force and effect throughout the term of this contract. Such insurance shall cover all risks arising directly or indirectly out of Legal Counsel's activities or work hereunder, including the operations of its subcontractors of any tier.

- B. The policy or policies of insurance maintained by Legal Counsel and its subcontractors shall provide at least the following limits and coverages:

1. Commercial General Liability Insurance

Legal Counsel shall obtain, at Legal Counsel's expense, and keep in effect during the term of this contract, Comprehensive General Liability Insurance covering Bodily Injury and Property Damage on an "occurrence" form (1996 ISO or equivalent). This coverage shall include Contractual Liability insurance for the indemnity provided under this contract. The following insurance will be carried:

<u>Coverage</u>	<u>Limit</u>
General Aggregate	\$2,000,000
Products-Completed Operations Aggregate	\$1,000,000
Each Occurrence	\$1,000,000
Personal & Advertising Injury	\$1,000,000
Fire Damage (Any one fire)	\$50,000
Medical Expense (Any one person)	\$5,000

2. Legal Errors & Omissions/Lawyers Professional Liability Insurance

Legal Counsel shall obtain, at Legal Counsel's expense, and keep in effect during the term of this contract, Professional Liability Insurance covering any damages caused by an error, omission or any negligent acts. This coverage shall include Annual Aggregate & Per Occurrence limits of \$2,000,000 per attorney.

3. Commercial Automobile Insurance

Legal Counsel shall obtain, at Legal Counsel's expense, and keep in effect during the term of this contract, Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than \$1,000,000.

4. Workers' Compensation Insurance

Legal Counsel its subcontractors, if any, and all employers providing work, labor or materials under this contract are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage that satisfies Oregon law for all their subject workers. Legal Counsel or subcontractors who perform work without the assistance or labor of any employee need not obtain such coverage. This shall include Employer's Liability Insurance with coverage limits of not less than \$100,000 each accident.

5. Additional Insured Provision  
The Commercial General Liability Insurance and Commercial Automobile Insurance policies and other policies the City deems necessary shall include the City, its officers, directors, and employees as additional insureds with respect to this contract.
6. Extended Reporting Coverage  
If any liability insurance required by this contract is arranged on a "claims made" basis, Extended Reporting coverage will be required at the completion of this contract to a duration of 24 months or the maximum time period the Legal Counsel's insurer will provide if less than 24 months. Legal Counsel will be responsible for furnishing certification of Extended Reporting coverage for 24 months following contract completion. Continuous "claims made" coverage will be acceptable in lieu of Extended Reporting coverage, provided its retroactive date is on or before the effective date of this contract.
7. Notice of Cancellation  
There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 30 days' written notice to the City. Any failure to comply with this provision will not affect the insurance coverage provided to the City. A 30 days' notice of cancellation provision shall be physically endorsed on the policy.
8. Insurance Carrier Rating  
Coverages provided by the Legal Counsel must be underwritten by an insurance company deemed acceptable by the City. The City reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.
9. Certificates of Insurance  
As evidence of the insurance coverage required by this contract, the Legal Counsel shall furnish Certificates of Insurance to the City. No contract shall be effected until the required certificates have been received and approved by the City. The certificate will specify and document all provisions within this contract. A renewal certificate will be sent to the address listed in this section 10 days prior to coverage expiration.
10. Primary Coverage Clarification  
The parties agree that Legal Counsel's coverage shall be primary to the extent permitted by law. The parties further agree that they consider insurance maintained by the City as excess and not contributory insurance as to the insurance required in this section.
11. Cross Liability Clause



A cross-liability clause or separation of insureds clause will be included in all general liability and professional liability policies required by this contract.

Legal Counsel's insurance policy shall contain provision that such policies shall not be canceled or their limits of liability reduced without 30 days prior notice to City. A copy of each insurance policy, certified as a true copy by an authorized representative of the issuing insurance company, or at the discretion of City, in lieu thereof, a certificate in form satisfactory to City certifying to the issuance of such insurance shall be forwarded to:

Loreen R. Mills, Risk Manager  
City of Tigard  
13125 SW Hall Blvd.  
Tigard, OR. 97223

Such policies or certificates must be delivered prior to commencement of the work. The procuring of such required insurance shall not be construed to limit Legal Counsel's liability hereunder. Notwithstanding said insurance, Legal Counsel shall be obligated for the total amount of any damage, injury, or loss caused by negligence or neglect connected with this contract.

9. **PROFESSIONAL SERVICES**

The City requires that services provided pursuant to this Agreement shall be provided to the City by a Legal Counsel which does not represent clients on matters contrary to City interests. Further, Legal Counsel shall not engage services of an attorney and/or other professional who individually, or through members of his/her same firm, represents clients on matters contrary to City interests.

Should Legal Counsel represent clients on matters contrary to City interests or engage the services of an attorney and/or other professional who individually, or through members of his/her same firm, represents clients on matters contrary to City interests, Legal Counsel shall consult with the appropriate City representative regarding the conflict.

After such consultation, the Legal Counsel shall have 30 days to eliminate the conflict to the satisfaction of the City. If such conflict is not eliminated within the specified time period, the Agreement may be terminated pursuant to Section 13 of this agreement.

10. **METHOD & PLACE OF GIVING NOTICE, SUBMITTING BILLS & MAKING PAYMENTS**

All notices shall be made in writing and may be given by personal delivery or by mail. Notices sent by mail should be addressed as follows:

<u>City of Tigard</u>	<u>(Legal Counsel)</u>
<u>Attn:</u>	<u>Attn:</u>
<u>Mail: 13125 SW Hall Blvd.</u>	<u>Mail:</u>

Tigard, OR 97223	
Phone: (503)	Phone:
Fax:	Fax:
Email Address:	Email Address:

and when so addressed, shall be deemed given upon deposit in the United States mail, postage prepaid. In all other instances, notices, bills and payments shall be deemed given at the time of actual delivery. Changes may be made in the names and addresses of the person to whom notices, bills and payments are to be given by giving written notice pursuant to this paragraph. All bills and payments shall be sent to the attention of the City's Senior Accountant at 13125 SW Hall Blvd., Tigard, Oregon 97223.

11. **MERGER**

This writing is intended both as a final expression of the Agreement between the parties with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement. No modification of this Agreement shall be effective unless and until it is made in writing and signed by both parties.

12. **TERMINATION WITHOUT CAUSE**

At any time and without cause, as authorized under Tigard Municipal Code 2.60.010, the City shall have the right in its sole discretion, to terminate this Agreement by giving notice to Legal Counsel. If City terminates the contract pursuant to this paragraph, it shall pay Legal Counsel for services rendered to the date of termination. Termination by City must be done by motion of the City Council.

13. **TERMINATION WITH CAUSE**

A. City may terminate this Agreement effective upon delivery of written notice to Legal Counsel, or at such later date as may be established by City, under any of the following conditions:

1. If City funding from federal, state, local, or other sources is not obtained and continued at levels sufficient to allow for the purchase of the indicated quantity of services. This Agreement may be modified to accommodate a reduction in funds.
2. If federal or state regulations or guidelines are modified, changes, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Agreement.
3. If any license or certificate required by law or regulation to be held by Legal Counsel, its subcontractors, agents, and employees to provide the services required by this Agreement is for any reason denied, revoked or not renewed.
4. If Legal Counsel becomes insolvent, if voluntary or involuntary petition in bankruptcy is filed by or against Legal Counsel, if a receiver or trustee is appointed for Legal Counsel, or if there is an assignment for the benefit of creditors of Legal Counsel.

Any such termination of this Agreement under paragraph (A) shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

B. City, by written notice of default (including breach of contract) to Legal Counsel, may terminate the whole or any part of this Agreement:

1. If Legal Counsel fails to provide services called for by this Agreement within the time specified herein or any extension thereof, or
2. If Legal Counsel fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from City, fails to correct such failures within ten (10) days or such other period as City may authorize.
3. If Legal Counsel fails to eliminate a conflict as described in Section 9 of this Agreement.

The rights and remedies of City provided in the above clause related to defaults (including breach of contract) by Legal Counsel shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

If City terminates this Agreement under paragraph (B), Legal Counsel shall be entitled to receive as full payment for all services satisfactorily rendered and expenses incurred, an amount which bears the same ratio to the total fees specified in this Agreement as the services satisfactorily rendered by Legal Counsel bear to the total services otherwise required or be performed for such total fee; provided, that there shall be deducted from such amount the amount of damages, if any, sustained by City due to breach of contract by Legal Counsel. Damages for breach of contract shall be those allowed by Oregon law, reasonable and necessary attorney fees, and other costs of litigation at trial and upon appeal.

14. **ACCESS TO RECORDS**

City shall have access to books, documents, papers and records of Legal Counsel that are directly pertinent to this Agreement for the purpose of making audits, examinations, excerpts and transcripts.

15. **CITY ATTORNEY BAR MEMBERSHIP/OCAA MEMBERSHIP REQUIREMENTS**

Legal Counsel is responsible for maintaining Legal Counsel's professional standing as a member of the Oregon State Bar Association and the Oregon City Attorney's Association.

16. **NON-WAIVER**

The failure of City to insist upon or enforce strict performance by Legal Counsel of any of the terms of this Agreement or to exercise any rights hereunder, should not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon such terms or rights on any future occasion.

17. **ATTORNEYS' FEES**

In case suit or action is instituted to enforce the provisions of this contract, the parties agree that the losing party shall pay such sum as the court may adjudge reasonable attorney fees and court costs, including attorney's fees and court costs on appeal.

18. **GOVERNING LAW**

The provisions of this Agreement shall be construed in accordance with the provisions of the laws of the State of Oregon. Any action or suits involving any question arising under this Agreement must be brought in the appropriate court of the State of Oregon.

19. **COMPLIANCE WITH APPLICABLE LAW**

Legal Counsel shall comply with all federal, state and local laws and ordinances, applicable public contracts, and to the work to be done under this contract.

20. **CONFLICT BETWEEN TERMS**

It is further expressly agreed by and between the parties hereto that should there be any conflict between the terms of this instrument in the proposal of the contract, this instrument shall control and nothing herein shall be considered as an acceptance of the said terms of said proposal conflicting herewith.

21. **AUDIT**

Legal Counsel shall maintain records to assure conformance with the terms and conditions of this Agreement, and to assure adequate performance and accurate expenditures within the contract period. Legal Counsel agrees to permit City, the State of Oregon, the federal government, or their duly authorized representatives to audit all records pertaining to this Agreement to assure the accurate expenditure of funds.

22. **SEVERABILITY**

In the event any provision or portion of this Agreement is held to be unenforceable or invalid by any court of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect and shall in no way be affected or invalidated thereby.

23. **COMPLETE AGREEMENT**

This Agreement and attached exhibits constitutes the entire Agreement between the parties. No waiver, consent, modification, or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change if made, shall be effective only in specific instances and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. Legal Counsel, by the signature of its authorized representative, hereby acknowledges that he has read this Agreement, understands it and agrees to be bound by its terms and conditions.

IN WITNESS WHEREOF, City has caused this Agreement to be executed by its duly authorized undersigned officer and Legal Counsel has executed this Agreement on the date hereinabove first written.

Approved by Tigard Local Contract Review Board on the (Day) day of (Month), (Year)

**CITY OF TIGARD**

By: \_\_\_\_\_  
Signature of City Manager

\_\_\_\_\_  
Printed Name of City Manager

Date: \_\_\_\_\_

**LEGAL COUNSEL**

By: \_\_\_\_\_  
Signature of Legal Counsel Principal

\_\_\_\_\_  
Printed Name of Legal Counsel Principal

Date: \_\_\_\_\_

**ATTORNEY SERVICES CONTRACT EXHIBIT A**  
**SCOPE OF LEGAL SERVICES**

*The final Scope of Legal Services will be developed during the award phase based upon which direction the City take in regards to one attorney firm performing all services versus two firms performing the different services detailed in the RFP packet.*

Agenda Item No.: Study Session  
Meeting of: August 23, 2005

Packet Materials for the following Study Session item:

## Measure 37 Training

will be available in hard copy on Friday, August 19, 2005 and will be delivered to City Council in their Friday mail packet.

Contact the City Recorder's Office at 503-639-4171  
for more information.

# Proclamation

## National Alcohol and Drug Addiction Recovery Month September, 2005

**WHEREAS**, substance use and addiction result in huge societal and economic costs. It was recently estimated that the cost of untreated addiction in the United States is \$294 billion a year. Despite this staggering statistic, 76 percent of people in need of treatment for a problem with illicit drugs did not seek or receive treatment; and

**WHEREAS**, the toll substance abuse takes on family, friends, and community is immeasurable; and

**WHEREAS**, every day in every part of the United States, men, women, and youth are entering treatment and beginning the road to recovery and families are seeking hope and recovery in support programs and counseling; and

**WHEREAS**, National Alcohol and Drug Addiction Recovery Month celebrates the tremendous strides taken by individuals who have undergone successful treatment, families in recovery, and those in the treatment field who have dedicated their lives to helping people recover; and

**WHEREAS**, this year's theme, "Join the Voices for Recovery: Healing lives, Families, and Communities", invites all segments of society to join the recovery community in improving the quality of treatment programs and coordinated services in an effort to eradicate the disease of addiction; and

**WHEREAS**, the U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration's Center for Substance Abuse Treatment; and the Office of National Drug Control Policy; invite all residents of Tigard to participate in National Alcohol and Drug Addiction Recovery Month.

**NOW, THEREFORE BE IT RESOLVED THAT I**, Mayor Craig Dirksen of the City of Tigard, Oregon, do hereby proclaim the month of September 2005 as

### NATIONAL ALCOHOL AND DRUG ADDICTION RECOVERY MONTH

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

**IN WITNESS WHEREOF**, I have hereunto set my hand and caused the Seal of the City of Tigard to be affixed.

\_\_\_\_\_  
Craig Dirksen, Mayor  
City of Tigard

**Attest:**

\_\_\_\_\_  
City Recorder



# PROCLAMATION

## Stepfamily Day

**WHEREAS**, Stepfamily Day is enhanced by our strong commitment to support the stepfamilies of our nation in their mission to raise their children, create strong family structures to support the individual members of the family, and instill in them a sense of responsibility to all extended family members; and

**WHEREAS**, approximately half of all Americans are currently involved in some form of stepfamily relationship and it is the vision of Founder, Michigan's Christy Borgeld and the Stepfamily Association of America, that all stepfamilies in the United States be accepted, supported and successful; and

**WHEREAS**, Tigard, and our nation has been blessed by thousands upon thousands of loving stepparents and stepchildren who are daily reminders of the joy, trials, and triumphs of the stepfamily experience and of the boundless love contained in the bond between all types of parents and children; and

**WHEREAS**, Stepfamily Day is a day to celebrate the many invaluable contributions stepfamilies have made to enriching the lives and life experience of the children and parents of America and to strengthening the fabric of American families and society;

**NOW THEREFORE BE IT RESOLVED THAT I**, Craig Dirksen, Mayor of Tigard, on behalf of the entire City Council, do hereby proclaim:

**September 16, 2005**

## Stepfamily Day

in Tigard, Oregon and urge our citizens, businesses and organizations to join in this observance.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2005.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the City of Tigard to be affixed.

\_\_\_\_\_  
Craig Dirksen, Mayor  
City of Tigard

**Attest:**

\_\_\_\_\_  
City Recorder

COUNCIL MINUTES  
TIGARD CITY COUNCIL MEETING  
JULY 26, 2005

- STUDY SESSION

Mayor Dirksen called the meeting to order at 6:30 p.m.

City Council Present: Mayor Dirksen and Councilors Harding, Sherwood, Wilson and Woodruff.

- > DISCUSSION OF THE CITY'S USE OF *LISTSERV*

Network Services Director Ehrenfeld and Network Technician Sears distributed and reviewed information about methods to e-mail notifications and information to Tigard citizens. A copy of the information distributed to the City Council is on file in the City Recorder's office. Two options hosted by outside companies were reviewed:

1. Listserv – A listserv, or list server, automatically sends messages to multiple e-mail addresses on a mailing list. When someone subscribes to a mailing list, the listserv will automatically add the address and distribute future e-mail messages to that address along with all the others on the list. When someone unsubscribes, the listserv removes the address.
2. RSS – "Really Simple Syndication" is a method of providing website content such as news stories or software updates in a standard format. RSS content can be accessed with an RSS-enabled Web browser or other programs designed for retrieving RSS feeds.

After discussion, City Council consensus was for staff to implement both Listserv and RSS. These services will be announced to the public when ready.

At Councilor Harding's suggestion, Network Services Director Ehrenfeld advised he would look into making City Hall contact information more visible on the City's website.

- > ADMINISTRATIVE ITEMS

- Review of Pilot Neighborhood Program Map

Assistant to the City Manager Newton reviewed with the City Council the proposed boundaries for the Neighborhood Program and the three areas selected for the pilot program:

1. Area 1 – An area served by the Beaverton School District.
2. Area 4 – An area located in "Metzger."
3. Area 8 – An established area that includes part of Summerfield and an adjacent neighborhood.

Assistant to the City Manager Newton advised she will be meeting with people over the next six weeks. The current Neighborhood Program map shows boundaries outlining 12 areas.

Assistant to the City Manager Newton said the name of this program has not been decided as she thought it would be good to solicit ideas for the name from program participants.

Mayor Dirksen said he would like to see a formal "kickoff" of this program; he suggested a picnic event.

- Procedural Review by City Attorney for the Quasi-Judicial Hearing

City Attorney Ramis reviewed the quasi-judicial hearing process for the appeal hearing on tonight's agenda (Agenda Item No. 4). Highlights of this review are:

- ↳ The City Council will be acting as judges with regard to the interpretation of the Tigard Municipal Code.
- ↳ The City Council must disclose ex parte contact, which includes site visits and if a City Council member has formed some opinions about the site because of the visit, this information should be shared.
- ↳ The City Council's decision must be based on criteria.
- ↳ The City Council may impose conditions.
- ↳ The applicant will testify first.
- ↳ The hearing is *de novo*, so new evidence can be introduced.
- ↳ If someone asks for a continuance, it is up to the City Council to decide whether to grant the continuance since the first evidentiary hearing was before the Hearings Officer.
- ↳ Application of the criteria should be consistent with reasons represented in a factual way.

- ↳ There was a question about Measure 37 issues. Applicability to this hearing will be discussed should the topic come up during the hearing.
  - ↳ If the City Council determines its interpretation is different from that of the staff and Hearings Officer, then the procedure will be to make a tentative decision and direct the staff to return with findings at a future date for City Council consideration.
  - ↳ It would be acceptable to ask the prevailing party to draft proposed findings.
- University of Oregon/League of Oregon Cities survey of advisory committees. Information was distributed to the City Council, which is on file in the City Recorder's office. Interim City Manager Prosser reported on this study on advisory committees to learn how committee approaches to process and decision making can improve performance. Researchers have asked to survey members of the following City of Tigard committees:
    1. Citizens for Community Involvement
    2. Downtown Task Force/Commuter Rail
    3. Park and Recreation Advisory Board
    4. Library Board
    5. Transportation Financing Strategies Task Force

A report summarizing the findings from the study will be available through the League of Oregon Cities. If there are an adequate number of responses to insure confidentiality, a summary of findings for each city will be reported.

- Strategic Planning Retreat is tentatively scheduled for September 30, 2005. The retreat will start at noon at Councilor Sherwood's home. If someone wants to attend and ADA access is needed, Councilor Woodruff said his home could be the alternate site.
- Council Calendar:
  - August 9 Council Business Meeting – 6:30 p.m. – Town Hall
  - August 16 Council Workshop Meeting – 6:30 p.m. – Town Hall
  - August 23 Council Business Meeting – 6:30 p.m. – Town Hall
  - August 30 5<sup>th</sup> Tuesday Council Meeting – 7-9 p.m. – Tigard Water Auditorium
- EXECUTIVE SESSION: The Tigard City Council went into Executive Session at 7:11 p.m. to consider employment of a public officer and current/pending litigation under ORS 192.660(2)(a)(h).

Executive Session concluded at 7: 23 p.m.

1. BUSINESS MEETING

- 1.1 Mayor Dirksen called the City Council & Local Contract Review Board meeting to order at 7:31 p.m.
- 1.2 City Council Present: Mayor Dirksen and Councilors Harding, Sherwood, Wilson and Woodruff.
- 1.3 Pledge of Allegiance
- 1.4 Council Communications & Liaison Reports: None
- 1.5 Call to Council and Staff for Non-Agenda Items: None

2. CITIZEN COMMUNICATION

- Gretchen Buehner, 13249 SW 136<sup>th</sup> Place, Tigard OR 97223 testified that Washington County does not intend to do upgrade or repairs on roads. She suggested that since the City has annexed areas on Bull Mountain up to 133<sup>rd</sup> Avenue, the City should consider acquiring ownership of Bull Mountain Road from 99W to 133<sup>rd</sup> Avenue so it can be brought up to City standards. The Mayor advised that this was something to consider and said this should be brought up during the capital improvement process later this year. Interim City Manager Prosser suggested this might be a topic for discussion with County officials who are scheduled to attend the August 16, 2005, City Council meeting to review the issue papers prepared for Bull Mountain.
- John Frewing, 7110 SW Lola Lane, Tigard, OR 97223 advised he had two issues:
  1. A junkyard located at 74<sup>th</sup> and Cedarcrest – Mr. Frewing said that after years of neighborhood complaints, neighbors came to the City Council on November 30 and asked for enforcement action. Mr. Frewing referred to a decision by the Municipal Judge in April. The imposition of a fine was delayed 30 days and then delayed again for another 30 days. Mr. Frewing said he will not be able to attend the August Fifth Tuesday meeting and he wanted to make sure the City Council knows the situation persists. Mr. Frewing asked for a response to the most recent e-mails to the City asking why the City has not yet compiled the compliance history on this situation.

Mayor Dirksen said he has requested information from staff. The Mayor advised he understands the Court has found the

property owner in violation of the Code, which has resulted in fines and imposition of a compliance date. In response to a question from Mayor Dirksen, Interim City Manager Prosser advised that it was his understanding that the Judge has ordered the property owner to come into compliance and set a deadline. The property owner continues to show progress towards compliance, so the Judge has extended the deadline. Mayor Dirksen commented that he was surprised that the Judge granted another extension since this has already been tried; however, this is the Judge's prerogative.

Mr. Frewing said he wondered whether the Code has ever been enforced "in this area."

2. Mr. Frewing noted his second issue relates to annexation. He said that people from Bull Mountain have complained that the City has not looked after them in past years. He said the same thing exists in the Metzger area. He referred to the Washington County-City of Tigard Intergovernmental Agreement that calls for each entity to review developments in the areas of interest, Bull Mountain and Metzger. He reported there will be public hearings in the coming weeks on a development at 82<sup>nd</sup> and Cedarcrest. He asked the City Council to direct staff to review the development carefully to see that it serves the interests of Tigard. Mr. Frewing said Tigard has an interest because that area will be eventually annexed to Tigard and the "...right thing for Tigard to be doing now is to be keeping its eyes open and looking out, making sure the Washington County approvals there make that area decent when the time comes to annex Metzger..." He said he was specifically interested in making sure that the Washington County approval provides for the Ash Creek trail to go through this area.

- Follow-up to Previous Citizen Communication

Interim City Manager Prosser reported that on July 12, 2005, Bob Storer, John Frewing and Gretchen Buehner offered testimony regarding concerns with the criteria under consideration for the purchase of park land and/or greenway property by the City of Tigard. The Park and Recreation Advisory Board is reviewing this matter and its recommendation will be submitted to the City Council for consideration.

Youth Advisory Council President Rob Williams announced the items listed on the Consent Agenda items:

3. CONSENT AGENDA:

3.1 Approve Council Minutes for June 21 and 28, 2005

3.2 Adopt a Resolution Declaring the City's Intent to Participate in the City County Insurance Services Group Self-Insurance Program –

RESOLUTION NO. 04-48 – A RESOLUTION DECLARING THE CITY OF TIGARD'S INTENT TO PARTICIPATE IN THE CITY COUNTY INSURANCE SERVICES GROUP SELF-INSURANCE PROGRAM

3.3 Adopt a Resolution Extending the City's Workers' Compensation Coverage to City Volunteers –

RESOLUTION NO. 04-49 – A RESOLUTION EXTENDING THE CITY OF TIGARD'S WORKERS' COMPENSATION COVERAGE TO VOLUNTEERS OF THE CITY OF TIGARD

3.4 Approve Intergovernmental Agreement for Membership in the Office of Consolidated Emergency Management (OCEM) in Washington County

Motion by Councilor Sherwood, seconded by Councilor Woodruff, to approve the Consent Agenda.

The motion was approved by a unanimous vote of Council present:

Mayor Dirksen:	Yes
Councilor Harding:	Yes
Councilor Sherwood:	Yes
Councilor Wilson:	Yes
Councilor Woodruff	Yes

4. CONTINUATION FROM JULY 12, 2005, OF PUBLIC HEARING (QUASI-JUDICIAL) – APPEAL OF CONDITIONAL USE PERMIT FOR THE TIGARD FIRST BAPTIST CHURCH EXPANSION

**ITEM ON APPEAL:** On April 25<sup>th</sup>, 2005 the Tigard Hearing's Officer held a public hearing to consider an application for conditional use approval to construct a 22,500 square foot expansion of the existing church and associated parking in three phases. As part of Phase 2, the applicant

proposed to relocate the existing driveway on SW Gaarde Street. The Hearing Officer adopted findings approving the Conditional Use Permit and Sensitive Lands Reviews and denied the requested Adjustment to the access spacing standards. An appeal was filed on May 25, 2005 by the owner and applicant, on the basis that the Hearing's Officer misconstrued the applicable law. More specifically, the appellant's argue that the Hearing Officer's decision failed to balance the approval criteria.

**LOCATION:** 11075 SW Gaarde Street; WCTM 2S103DC, Tax Lot 1100.

**ZONE:** R-3.5: Low-Density Residential District.

**REVIEW CRITERIA BEING APPEALED:** Community Development Code Chapters 18.370 and 18.705.

- a. Mayor noted this is a continuation of the Public Hearing, which was *opened at the July 12 meeting.*

- b. Description of the matter before the City Council:

Associate Planner Tracy read the above description of the matter before the Council in this public hearing.

- c. Legal Counsel Process Review:

City Attorney Ramis summarized the quasi-judicial land use proceedings' key points of process and procedure:

The staff report on this hearing has been available for viewing and downloading from the City's website and a paper copy of the staff report has been available in the Tigard Public Library for the last seven days. The Council's role is this hearing is to make a land use decision under existing laws. The Council cannot change the law for the land use application now under consideration.

Any person here tonight can offer testimony. Please wait until you are asked to speak by the Mayor and try to limit your remarks to the applicable approval standards for the application. Members of the City Council will be asked at the beginning of the hearing whether they have any conflicts of interest. And, if a Council member has an actual conflict the Council member cannot participate. Council members must declare any contacts about this case with a member of the public. Council members must also declare if they have independent knowledge of relevant facts, such as a visit to the site in question. The Council member who describes ex parte contacts or independent information may still participate in the decision. After the discussion of conflicts and ex parte contacts, any person may challenge the participation of the Council member or rebut the



statements made. The Council member in question may respond to such a challenge.

Tonight the staff will summarize the staff report and then the applicant and those in favor of the application will testify. After that, witnesses who oppose the application or have questions or concerns will testify. If there is opposition or if there are questions, the applicant can respond. The Council members may also ask the staff and witnesses questions throughout the hearing until the record closes.

Comments from the audience are not part of the record. After all testimony is taken including rebuttal, the applicant may make a closing statement. After the record is closed, the City Council will deliberate about what to do about the application. During the deliberations, the City Council may reopen the public portion of the hearing if necessary to receive additional evidence before making a decision. You may testify orally or in writing before the close of the public record to preserve your right to appeal the Council's decision to the Land Use Board of Appeals. Failure to raise an issue clearly enough so that the Council understands it and can address the issue, precludes an appeal on that issue. Failure to raise Constitutional or other issues related to the proposed Conditions of Approval, with sufficient specificity to allow a response precludes an action for damages in Circuit Court. Please do not repeat testimony offered by yourself or earlier witnesses. If you agree with a statement of an earlier witness, please just state that fact and add any additional points of your own. Also, please refrain from disruptive demonstrations in the case.

d. Declarations or Challenges

City Attorney asked:

- Do any Council members have a conflict of interest to report?  
None were reported.
- Do any Council members wish to report any ex parte contact or information gained outside the hearing, including any site visits?

Council members Harding and Sherwood indicated they frequently drive by the site.

Mayor Dirksen reported on July 12, he had a telephone conversation with a Church staff member who wanted to discuss the issue. When Mayor Dirksen alerted this person that the

Council would be acting in a quasi-judicial manner and anything discussed outside of this hearing would be seen as prejudicial, there was no further substantive discussion on this matter.

City Attorney Ramis said the statements by City Council indicate to the public that the Council is generally familiar with the site. If there are specific facts that a person wants to bring to the Council's attention, please feel free to do so in your testimony.

City Attorney Ramis asked if there were any challenges from the audience pertaining to the Council's jurisdiction to hear this matter, or is there a challenge on the participation of any member of the City Council. There were none.

Mayor Dirksen reminded the public that he officially opened the hearing on July 12; therefore he did not officially "open" it tonight, because it was already open.

e. Staff Report: Community Development Staff

Associate Planner Tracy advised essentially there was one element before the City Council as provided in the Development Code, which was access management. The access management strategy for arterial roads requires that driveways and streets be spaced no closer than 600 feet apart.

Associate Planner Tracy noted that at the last meeting the question was asked whether an agreement could be reached on this matter. He said one of the reasons why "we meet here tonight" is that in the Hearings Officer conditions of approval within the final order there is no provision for emergency-only access only for the disputed driveway location. Staff has concurred that this was an inadvertent omission by the Hearings Officer and staff agrees the condition should be modified as shown in Exhibit B of the draft resolution.

Associate Planner Tracy then addressed the request for opening up the driveway access for general public use. Staff has outlined a response to the issues that have been raised so far in a memorandum to the City Council dated July 22, 2005. The criteria for the adjustment request cannot be met in this situation since there is an alternate means of access to a lower classification street.

Staff has examined other options, including the applicant's offer to limit access during certain time periods. Unfortunately, there are no provisions in the Code to allow these types of mitigating trade-offs.

The staff's position is also consistent with the City's Transportation System Plan (TSP). The TSP was adopted in 2002 and acknowledges that such restrictions are often difficult to implement. Associate Planner Tracy quoted a section from the TSP:

"Access management is not easy to implement and requires long institutional memory of the impacts of short access spacing: increased collisions, reduced capacity, poor sight distance, and greater exposure to vehicle conflicts. The most common opposition to access control is that, 'There are driveways all over the place with closer spacing than mine...' These statements are commonly made without historical reference. Many of the preexisting driveways that do not meet access spacing requirements were put in when traffic volumes were substantially lower and no access spacing criteria were mandated. With higher and higher traffic volume in the future, the need for access control on all arterial roadways is critical. The outcome of not managing access properly is additional wider roadways, which have a much greater impact than access control."

Associate Planner Tracy said one of the arguments that might be presented to the Council was that there was access on Gaarde further up the street. He advised the Council that Engineering staff was available to respond to this, if necessary.

Associate Planner Tracy said the appellant argues that the Hearings Officer misconstrued the applicable law and did not balance the criteria for granting the adjustment; however, if the Council determines that the adjustment criteria have been inaccurately applied, then staff would seek direction as to how the criteria should be applied. Without such direction, the problem may be that this Type 2 process, which contains limited discretion, will contain largely discretionary criteria, which would more appropriately be a Type 3 process involving a public hearing. Essentially, what this would be leading to is a modification of the Code.

f. Public Testimony

- Applicant Representatives:

Dave Smith, Attorney at Law  
6950 SW Hampton, #232  
Tigard, OR 97223

Jim Wilson, Project Manager  
14357 SW 90<sup>th</sup> Avenue  
Tigard, OR 97224

Steve McCracken, Senior Pastor  
16412 SW Luke Lane  
Tigard, OR 97223

Attorney Smith advised this is a simple case of the Church requesting a new driveway access for a safer exit and for access by the Fire Department.

Attorney Smith reviewed his statement in support of the appeal, A copy of Attorney Smith's *Applicant's Memorandum in Support of Appeal* is on file in the City Recorder's office. Issues included:

- The Code language is ambiguous.
- Safety issues are present.
- Assertion that the City Council could interpret the Code's ambiguous language and approval could be granted because the requested driveway would result in safer access.
- The Hearing's Officer recognized that the 110<sup>th</sup> intersection is hazardous (sight distance and traffic speed on Gaarde Street).
- Staff's concerns can be addressed by allowing limited access on Gaarde Street; i.e., allowing access during specified days of the week and time of day to coincide when members would be attending services.
- The Director has the authority to move driveways on adjacent streets; i.e., access adjustment.

Attorney Smith said he would be happy to draft the findings if the City Council should choose to reverse the Hearings Officer's decision to grant the appeal of the Church.

Project Manager Wilson testified that the Church expanded its parking lot to relieve on-street parking on adjacent streets. Existing driveways are located at 110<sup>th</sup> Avenue and Gaarde street. The proposal is to add a second driveway on 110<sup>th</sup> and to relocate the Gaarde Street driveway 140 feet farther west from the 110<sup>th</sup> intersection from its present location. He said the Hearings Officer concluded the access point on 110<sup>th</sup> Avenue was all that was authorized by the City's code and that any driveway on Church property accessing Gaarde Street would be too close to the 110<sup>th</sup> intersection. Mr. Wilson said the Code prohibits driveways within 600 feet of the intersection without a Code adjustment. All of the traffic

from the Church that needs to go on Gaarde Street would, therefore, have to go through that intersection.

Mr. Wilson advised that the Church wants to work cooperatively with City and its neighbors and make the project an asset to the community. He said that they sincerely believe that the driveway on Gaarde is the best and only way to make their project such an asset. Since the Fire Department insists on the Gaarde Street access, and City staff supports this emergency access, he asked why the Church could not use the driveway to attend worship services on Saturday evenings and Sundays.

Mr. Wilson said that the Church's traffic engineer says the Gaarde Street driveway is safer than having all of the Sunday traffic coming through the 110<sup>th</sup> intersection; the Hearings Officer agreed. The 110<sup>th</sup> Avenue intersection has poor visibility. He said staff suggested the solution to this problem is to improve that intersection. Mr. Wilson said the Church would do that, if it could. The Church's traffic engineer and the Hearings Officer agreed that trees and shrubs in front of homes located on 110<sup>th</sup> Avenue are what restrict visibility. Those trees and shrubs are on private property, not City right of way and the Church understands the City would not condemn that property for that purpose. Besides, removal of those trees and shrubs would destroy the buffer of Gaarde traffic that this vegetation provides to these homes.

The safest, easiest, and most reasonable solution to the problem is to allow the Church to use the fire access on Gaarde for Saturday evening and Sunday worship services. He said they would keep the access gated to Fire Department standards during the week and only open it for the above-mentioned worship times.

Senior Pastor McCracken submitted a written copy of his testimony, which is on file in the City Recorder's office. Pastor McCracken has served at the Tigard First Baptist Church for the last 12 years. He said the decision the City Council makes tonight has great implications for the Church and its mandate to serve the community. He noted that the Church has been at this Tigard location for 50 years. The Church has been, and continues to be passionate about this city. For nearly five decades, and before Tigard became a City, the Church has sought to be a benefit to the City.

Pastor McCracken said their church and the other churches in the community exist to give to the City and its people. They have always helped the homeless and the hungry and the hurting. They respond to need whenever and wherever they see it in the community. The Church gives financially to ease the strain and struggle of citizens

through food, rent, and utility assistance. Most of the time, recipients of such humanitarian aid are not from their congregation, but from those who walk in from the neighborhoods and community and ask for help. He said the Church is trying to be a good neighbor by relieving the impacts to 110<sup>th</sup> Street. He referred to past favorable responses from the Church to the City of Tigard, including granting easements.

Pastor McCracken advised another way they give to the community is that they employ four full-time pastors for the youth, children and young adults in the community. They patronize businesses in Tigard. Nearly 500 regular church attendees shop at stores, eat at restaurants and conduct other business in Tigard. He asked for the City Council to see the value that the Church adds to the community. They feel the closure of the Gaarde Street entrance would greatly obstruct their positive presence in the City. He said the Church is growing, just as is the City of Tigard. Part of their growth plan is aimed at the very issue being discussed tonight: cars, traffic and congestion. He said their first priority is to reduce any adverse impact on their neighbors who live on or around 110<sup>th</sup> Street, which borders their Church. Their plan is simple – build more parking to get the cars off the street and into a lot.

Pastor McCracken said it is their desire to ease the street traffic impact on their neighbors on 110<sup>th</sup>, however, is sure to fail if the Gaarde Street access is eliminated. Therefore, it is their strong belief that their expansion project, which includes retaining a relocated Gaarde Street driveway further from the 110<sup>th</sup>/Gaarde intersection, is by all means reasonable and appropriate.

Pastor McCracken said that for many years, the people of Tigard First Baptist Church have responded favorably to the City and the Council on numerous requests. They are asking that the City demonstrate the same kind of willingness to assist them by granting the variance as they continue to serve the people of the City without undue or unreasonable restraints.

Senior Pastor McCracken submitted petitions with more than 300 signatures supporting the Church's request for Gaarde Street access. The petitions are on file in the City Recorder's office.

- Proponents

- Bibianne Scheckla, 10890 SW Fairhaven Way, Tigard, OR 97223, testified she was not a member of the Tigard First Baptist Church. She asked that the City Council not close driveway

access for the Church on Gaarde Street, which would only place more traffic on SW 110<sup>th</sup>, which is a neighborhood road. She said the City widened Gaarde Avenue so it would hold more traffic – and now the City wants the traffic on 110<sup>th</sup>. This is the exact opposite of nearly closing North Dakota affecting 121<sup>st</sup> Street. She referred to a driveway for St. Anthony's cemetery, which contradicts the purpose and the dispute of this driveway on Gaarde Street as proposed by the Tigard Baptist Church. She asked that the City Council allow the driveway on Gaarde Street as well as the driveway on 110<sup>th</sup> Avenue. Both driveways are needed, mostly for Saturday evening and Sunday traffic. She noted a reference was made to the fact that the speed limit is 35 mph on Gaarde; however, at the Church's location, the traffic is still traveling at 20 mph, because of the school zone.

- Kit Whiteman, 9530 SW Edgewood, Tigard, OR 97223, testified that she and her husband have lived in Tigard for 44 years. Their first home in Tigard was on Gaarde Street. They lived next door to Mrs. Tigard and across the street from the Gaardes. She said they began worshiping at Tigard First Baptist Church in 1961 and the Church has made every attempt to be good citizens and neighbors. When the Canterbury apartment complex was first built, the City discovered they had built a sewer system that was totally inadequate to serve the needs of that large of a complex. This necessitated a sewer line and during that process, the sewer had to go through the Church property. At that time, they had a very small congregation and the financial impact was significant; however, they decided that in order to be a citizen of the community, they needed to comply with what the City asked them. The use of the property has been limited because of the sewer location. The property's use has been further limited because of the bike path that they agreed to allow on their property.

Ms. Whiteman said that with the many contributions made by the Church to make Tigard a better place for people to call home, she said she feels that now it is the City's turn to listen to what their needs are. They have tried to always comply and do what they've been asked to do. The access drive has been in existence for 44 years or more and she does not want the Church to lose it. The proposed Gaarde Street access creates a better traffic situation because it greatly improves the driver's visibility. The 110<sup>th</sup> intersections is less safe. The inability to see traffic was created when the City decided to align Gaarde Street with McDonald Street. She asked the City Council to allow the Church to keep its access on Gaarde Street. There is a need for rules;

however, this is a situation where increased safety along with logic and common sense should prevail.

- Ray Griffin, 14175 SW 93<sup>rd</sup> Avenue, Tigard, OR 97224, testified that during construction of SW Gaarde Street, Mike Mills of the City of Tigard Capital Improvement Team told the Church Property Commission that they would receive their new driveway and that it made good sense to pour the driveway ramp before the sidewalk was built so the sidewalk would not have to be torn out. Vannie Nguyen, Mike Mill's supervisor, also told Mr. Griffin that the Church would be allowed a new driveway, but that they might have to give up the existing driveway. During the construction of Gaarde Street, the Church allowed the City to store dirt on their property. The Church did this in good faith that the City was working with them on their needed driveway. The Church also worked with the Capital Improvement Team when an underground electrical line was placed on the 110<sup>th</sup> sidewalk property without a utility or construction easement and, again, they felt they were doing the right thing since the City was working with them on their driveway. When Gaarde was finished, the result was that the existing driveway on Gaarde is now too steep and Tualatin Fire and Rescue District says the current driveway is not acceptable. The Church decided it would make due until they relocated the driveway.

Mr. Griffin said it does not seem fair or right for one arm of the City to make promises to a landowner causing the landowner to act in good faith to accommodate the City's needs and then for another arm of the City to break those promises and take away an important feature that the landowner has had for years.

Mr. Griffin said the Church's request is logical, reasonable, and increases safety over present conditions. After so much good faith effort on the Church's part, he said he hoped the City Council would see the potential injustice in this situation and find in favor for the requested variance.

Councilor Woodruff asked if the agreement cited by Mr. Griffin earlier was a verbal understanding. Mr. Griffin said it was a verbal understanding. He worked with staff in the field and the Church moved a retaining wall to accommodate the driveway to be poured. It was a last-minute decision when they were told the driveway ramp would not be poured after they had already made the adjustments in the field. Mr. Griffin confirmed there was nothing in writing.



- Gary and Jeanne Henry, 1411 SW 120<sup>th</sup> Place Tigard, OR 97224. Mr. Henry advised they agreed with previous statements and had nothing further to add.
- Larry Vonada, 16352 SW Cromwell Court, Tigard, OR 97223, said he agreed with what has been stated regarding safety. He said he emphasized that the spirit within the Church is to be a good neighbor and he would like to continue to be a good neighbor to the people on SW 110<sup>th</sup>. Part of the purpose of the Church's project is to get cars off the street and into a parking lot so it does not create further and additional traffic problems.
- Frank Charbonneau, Charbonneau Engineering, 9370 SW Greenburg Road, Suite 411, Portland, OR 97223, said he would be available for questions. He said he is the traffic engineer for the project.
- Bruce Anderson, 11205 SW Gaarde Street, Tigard, OR 97224, said he is an adjacent property owner and has lived at this location for about 35 years. He asked for the City Council's support by allowing the requested access. Mr. Anderson said it seems unreasonable to restrict or take the driveway away. He said the proposed relocation of the driveway would be much safer because of better sight distance. He added that the Church has lived up to being a good neighbor and helping the community. Mr. Anderson said he is not a member of the Church, but has lived next door to them for a lot of years and they always been good and cooperative to him and, when there have been problems, they have been resolved.
- Opponents: None
- Rebuttal: None

g. Staff Recommendation:

Associate Planner Tracy reviewed a couple of points raised during testimony. He said it was important to note that Tigard First Baptist serves as an anchor of the community and the City appreciates the Church's efforts. Associate Planner Tracy noted the City has approved the conditional use expansion and now this is more a matter of how the City manages the public streets for all members of the public. Associate Planner Tracy referred to the increased volumes on Gaarde Street. Associate Planner Tracy noted Mr. Wilson raised an issue about sight distance at SW 110<sup>th</sup> and Gaarde. He said it was important to note that it is a requirement of the

approval that the sight distance be improved to the extent practicable. There are other situations where sight distance problems existed and the developers in those cases had to lower the road, obtain easements to trim hedges, etc. Associate Planner Tracy said he understands there is an existing sight distance problem, but there are two requirements being placed on this decision:

1. Regarding access, which is being discussed at this hearing.
2. Sight distance – it is a requirement that the Church move toward obtaining better sight distance. It may not be possible to get fully complying sight distance, but he noted it was within what was allowable.

Staff is recommending the Council adopt the draft ordinance that amends Condition No. 30, to reflect the allowance for emergency access as shown in Exhibit B and uphold the remainder of the Hearings Officer decision.

h. Council Discussion

Councilor Sherwood asked what triggers limiting access when it is already in existence? Associate Planner Tracy said one of the items reviewed was whether the non conforming access would “hold some ground here.” When are you doing development, the issue of access is raised and you have to satisfy the access standards. The non-conforming chapter requires that if you’re relocating or altering your access – or your non-conforming structure as in this case – it has to be rebuilt in a manner that conforms to the Code. Therefore, what has triggered the restriction on the access is that the Church has proposed a development that requires Conditional Use approval.

Councilor Sherwood asked if the construction on Gaarde did anything to damage their current access. Associate Planner Tracy said he believed the applicant would confirm that it did. When the Capital Improvements Team constructs a street improvement project, it is not considered development and it does not go through a development review process. Reconstruction of anyone’s driveway is not part of the land use review; therefore, the same standards do not apply.

In response to a question from Councilor Sherwood, Associate Planner Tracy advised the current driveway on Gaarde Street is too steep for emergency vehicle access. It is too steep because of the widening project on Gaarde. The Church is proposing to relocate that driveway about 140 feet further west. Councilor Sherwood asked that if the City destroyed their access so that is not useable, are we not beholden to allow it to be moved? Associate Planner Tracy said,

"We are still looking at how the access standard is being met. So whether it was in its current location or in a proposed location, the adjustment criteria, the spacing criteria would prevent that access from being on Gaarde."

Councilor Wilson noted that Mr. Smith raised an issue about Fire Department access and the fact that they are allowed to request access on the basis of safety and yet, he did not think anyone argues that the new proposal is safer than the access off of 110<sup>th</sup> Avenue. He asked for clarification of the Code that allows Tualatin Valley Fire and Rescue to demand an access when it is contrary to our spacing requirements. Associate Planner Tracy said he would need to take the time to research the Code; however, essentially the justification is that when there is an emergency crisis on a particular parcel, there is added safety measures (lights, sirens). It would not be a normal situation where a driver would come up on a driveway not see an emergency vehicle entering or leaving the site. There is not that kind of notification for drivers in a general access situation. Councilor Wilson said he served on the Planning Commission for eight years and said it is the City's procedure to follow rules with the Code. He said it always puzzled him that the City would receive comments from the Fire Department, TriMet or other agencies and sometimes these comments would have the force of law. At times this seemed arbitrary or subjective. He asked, in general terms, is there always an objective standard that is written? Associate Planner Tracy said the Fire Marshal must follow the International Fire Code. The Fire Code provides that access be provided within 150-feet of all portions of the building. When they do their site plan review, there is a Code and process that they follow when submitting comments. During the City's process of reviewing the development, staff is also in contact with the Fire Department to work out issues. What ends up before the City Council is a blend of the City's Code and other codes such as the Building Code and Fire Code. There is a standard that is applied; but it's not necessarily in the City's Code.

Councilor Woodruff asked whether there was precedence for looking at applications distinguishing between a new development vs. the type of development under consideration tonight. He note the change being requested will put the Church closer in compliance with the current Code, although not fully up to Code. Is there not some way that the Code allows for a different level of reviewing how things must be met. Associate Planner Tracy said this was a similar frustration of staff as the staff reviewed the Code to determine if the non conforming section of the Code would allow this request to be approved since the proposal would bring the situation on this property closer to conformance. Associate Planner Tracy suggested this

might be a section of the Code that should be "looked at." Councilor Woodruff agreed this should be reviewed.

Councilor Harding asked whether the City had a traffic engineer review this situation. Associate Planner Tracy advised that, yes, Frank Charbonneau was the traffic engineer.

Councilor Harding said the Church's entrance is "pretty well destroyed and it's quite a steep one now, compared to what it used to be. Redesigning that street impacted them greatly. I am also under the understanding that part of the reason Gaarde was widened to such a degree was because the bond went down a few years back and in order to have MSTIP funding, we had to make it with bike lanes and the turn lanes, etc., which greatly impacted their driveway and their parking ability....My guess is they'd go to 600 feet, but they can't because they would be in the creek or the wetlands...And, I don't think it's a matter of the Church not wanting to comply. I think that it's impossible..." Associate Planner Tracy responded that a conforming access on Gaarde would "put them off of the property." But, Associate Planner Tracy said, if you look at the adjustment criteria, it is possible for them to comply and that is what staff has recommended. The unfortunate thing is that the method of compliance means that all the driveway access should be shifted to SW 110<sup>th</sup> Avenue. Councilor Harding noted that SW 110<sup>th</sup> Street is a residential street. She said the Code does not seem to make a lot a sense for this location based on what she has experienced at this location. Associate Planner Tracy suggested that one way to look at this, in terms of the access management strategy, is to limit turning movements. Every time a driveway is added, there is another point for conflict; however, if you map out both directions of travel and the cars coming in and out along with bikes and pedestrians, there are up to eight points of conflict with each driveway. The general stance is to reduce the total number of driveways on arterial streets. Pacific Highway is a great example where there is no access management strategy and this has caused problems. Councilor Harding noted some access management has been proposed for the driveway through the installation of a gate so that the driveway would not be used Monday through Friday. She asked if it might be possible to monitor this.

Development Review Engineer McMillan said the proposed gate during the weekday time periods would be limiting access on days when there is no traffic to limit. When the free access is wanted, on Saturday and Sunday, to Gaarde Street (which is an arterial) vs. the weekday traffic, which is lower. Traffic would be held back at the

wrong time. At that point, the emergency access would not need to be gated.

Mayor Dirksen noted that a concern was expressed in the staff report that if that opening were made, people would be able to use it as a bypass around the intersection between Gaarde and SW 110<sup>th</sup> Avenue. If the City restricted the use of that to a limited amount of time then that would limit or eliminate that ability. This would be an argument for keeping this as a restricted access.

Mayor Dirksen noted that staff and the applicant have brought up the issue of sight distance at the intersection of SW 110<sup>th</sup>. He asked what was the sight distance like if they were to use the entrance on Gaarde Street at the new, proposed location – how does that compare? Traffic Engineer Charbonneau said that at the proposed access point further to the west on the Church property, the access would conform to meet the sight-distance standards. Mayor Dirksen asked Mr. Charbonneau if the sight distance would be better at the proposed Gaarde Street than the sight distance at SW 110<sup>th</sup> Avenue intersection. Mr. Charbonneau said it was definitely better. Development Review Engineer McMillan confirmed that one can see to the west for a long distance, but the eastern sight distance is in question. She noted the SW 110<sup>th</sup> intersection would still be used so the applicants have to either meet the requirements or “best meet” the requirements.

Mayor Dirksen said in looking at Tigard Development Code Chapter 18.370, there are several instances where one of the standards/requirements is that it be a safe intersection. He asked that while the proposed Gaarde Street driveway does not meet the 600-foot rule, is there anything about the access that would be inherently unsafe, other than a potential interference with traffic at the intersection with 110<sup>th</sup>? Other than the conflicting turning movements, Development Review Engineer McMillan said, “probably not.” Mayor Dirksen asked if the access to Gaarde Street were limited to a right-turn exit only, would that be helpful? Development Review Engineer McMillan said this was reviewed; however, they could not make it meet the adjustment and variance criteria. Again, she said it’s the left-turn movement that is the main concern. She said one can see the traffic coming from the west, so the left turn can be made safely and it is really the right turn that would be less safe because of the limited sight distance.

Councilor Woodruff acknowledged staff’s concerns and application of the rules. He said it is the staff’s responsibility to apply the rules;

however, the Council's position is to change the rules, if they need to be changed and to interpret the rules if necessary.

Councilor Wilson noted that this is a Conditional Use process and asked whether construction was imminent on this driveway? Project Engineer Wilson said if permission was given, the Church was prepared to build the new driveway immediately. He said they are in the process of fund raising toward this project. Phase 1 would be the lower parking lot level and would include the driveway for which they are seeking relocation. Associate Planner Tracy added the construction of the parking lot is included in Phase 1, the access opening to Gaarde does not occur until Phase 2. However, Associate Planner Tracy said there was no set time limit between those phases. Project Engineer Wilson said the Church was assuming that as soon as they opened the new, relocated driveway, they would be asked to close the existing driveway.

Councilor Sherwood asked if the Council was to make exceptions to existing access on streets within the City within the Code, what would the timeline be; i.e. six months or a year? Associate Planner Tracy there would be some time involved to draft language and analyzing what the impact would be citywide. He estimated at least six months for a Code amendment.

City Attorney Ramis advised the Council that it is possible for it to adopt the interpretation offered by the applicant. He noted there were two competing interpretations:

1. Staff's interpretation, which gives the Council and the Hearings Officer essentially no discretion, or
2. Applicant's proposed interpretation, which allows the Council discretion.

City Attorney Ramis said that while the staff's interpretation is the most obvious, he would not say the applicant's interpretation is impossible – it's also plausible. One outcome would be to interpret the Code as the applicant suggests and then to come back in a legislative process and take a harder look at this language to determine what the Council wants to do in the future, if the Council thinks the language needs some adjustment. For example, he suggested the Council might want to consider treating redevelopment differently than new development and change the threshold that triggers the rules.

In response to a question from Councilor Sherwood, Attorney Smith referred to his *Applicant's Memorandum in Support of Appeal*. Attorney Smith read the following language (Page 15):

"The Church proposes to the Council that the access and egress adjustment be approved subject to the condition that the driveway be gated and locked as specified in the Fire District letter."

Attorney Smith said that the above language would be the actual condition that the City Council would adopt. He then read language on Page 14:

"The City Council may interpret the ambiguous access and egress adjustment provisions of '20.C.5' to conclude that access on Gaarde Street may be allowed even if alternative access on 110<sup>th</sup> Avenue is available, when that alternative access will not result in safe access."

- i. Mayor Dirksen closed the hearing.
- j. Council Consideration:

Councilor Wilson said he is persuaded that the proposed entrance would be better than the 110<sup>th</sup> entrance; however, he said he was also persuaded that the Code appears to be black and white on the issue. He said he would prefer to address this matter legislatively at some point in the future. He noted he had asked about the timeline on the construction of the driveway so that the issue could be addressed in a way that if following the letter of the Code makes it more unsafe, that the Council would have discretion. Councilor Wilson said he did "not see it in the letter of the Code as it now exists." He advised he would "go with staff on this one."

Mayor Dirksen asked the City Attorney if it would be permissible for the applicant to reapply for this access at some point in the future after the City Council has made a legislative change. Or, he asked, if once the application is in, is it locked in to comply with the Code as it now exists? City Attorney Ramis said there is no time limit for reapplication and the applicant could reapply. Associate Planner Tracy noted that another option was that after the approval has been granted, the applicant could return for a modification of the Conditional Use.

Councilor Wilson noted that he was going to be a proponent in the future for limiting access on Pacific Highway and he did not want to

set a precedent granting the request simply because there is no one opposed. He said there are many other streets in Tigard where it is very important to limit access for traffic flow. Councilor Wilson said that the strict application of the Code in this instance might create a condition that is more unsafe and more onerous to the neighbors along 110<sup>th</sup>; however, in this case there is a Church in a residential area as a Conditional Use. Large churches are really best located along arterials, where they don't impact neighborhoods. In this case, he said he thought it would be a bad precedent to grant a variance that the City's Code does not appear to allow.

Councilor Sherwood asked if the Church applies for a variance after a Code amendment, will the Church have to pay all the application fees again? Associate Planner Tracy said that if the Code change would permit the driveway, the Church would need to apply for a Public Facility Improvement Permit, which would be about \$150. In addition, the Church would also have to apply for a modification of the Conditional Use permit.

Councilor Sherwood noted she had difficulty with this type of situation in that in order to make improvements for the City, a property owner has been adversely affected. She said she feels there needs to be accommodation. However, at the same time, she agreed with Councilor Wilson in that the City has been working for almost three years on access on major roads. She said she would much rather place a Code change on the fast track. She said she would go along with the provisions of the Code and hoped that the applicants would work with the City on a Code change.

Councilor Woodruff said that he thought that whenever there is any ambiguity in the Code, it is important to come down on the side of common sense. He said in this case it seems that there is a special circumstance. He also noted he was concerned about precedence and if someone requested a similar consideration in the future, the Council would need to look at how close it resembled this situation. Councilor Woodruff said he did think this was a special case. He said there is enough ambiguity, including safety issues, so that he was persuaded that the City should allow this variance and allow the Church to continue to have access to Gaarde, which the Church has had for several decades.

Councilor Harding said she concurred with Councilor Woodruff. She said she did not think a Code change would be necessary because she would not want someone to automatically be "grandfathered" and this might lead to an excuse to ask for a



variance. She said she was not one who would want to give variances very often. Councilor Harding said she has issues when the City does not follow the Code. She said that she has seen Gaarde Street evolve over the years. She said the City destroyed the Church's entrance when the street was widened. Councilor Harding said the street was wider than anybody ever thought it would be. She said the reason why this street was so wide was because it became an MSTIP project after the bond measure in Tigard went down. She said she thought it would be appropriate to grant the variance with the caveat that the City monitors that entrance and, if it should become a problem, then the driveway would have to be closed all of the time.

Councilor Woodruff noted he appreciated the extensive amount of work done by the City staff and the Church. He noted there is a great deal of work that goes into development review and pointed out that there are more than 300 pages of material that relates to this issue: the Codes, the analyses and letters. He said this is taken very seriously and he said he appreciates the civility on the part of the proponents. Although some might think this is a small issue, it is taken seriously when it comes to application of the City Code.

Mayor Dirksen said that in listening to the arguments from both sides, his opinion has swayed back and forth. He noted that City Council has looked for a way to allow this request. He said he searched the variance codes. The only requirement in the Code that appears to be "in the way" for granting the variance is that there is a way to access the property from another street. However, he said when looking at the plot plan, he thought it was arguable that because the two access driveways on 110<sup>th</sup> Avenue are so close together, they really act as one driveway divided into two different lanes.

Mayor Dirksen also noted the request was for a continuing use by the same body. He said he is sympathetic to the idea of allowing the Church to continue to use something they have used previously. He noted he shared Councilor Wilson's concerns with setting precedence as it relates to Pacific Highway. Mayor Dirksen said he was compelled to agree with Councilor Woodruff and Councilor Harding that in this case a special circumstance does exist. He also noted the only other opportunity to use another access in conjunction with adjacent property would be to join with Mr. Anderson's property. He noted that this would also require an impact on a natural drainage way between the two properties. He cited other issues in favor of a variance: 1. This is a special

circumstance for lot size or shape, and 2. There is an existing physical or natural system in a dramatic land form. For the above reasons, Mayor Dirksen said he believes the applicant substantially meets the criteria.

Mayor Dirksen suggested language for a motion: That the Council amend the recommended amendment, which says, "The existing driveway at Gaarde will be removed prior to final inspection on Phase 1 and restricted emergency access from SW Gaarde Street to the lower parking lot area may be constructed as required by Tualatin Valley Fire and Rescue, etc. ; and, he suggested that the change to "a restricted access from SW Gaarde Street to the lower parking lot be constructed" and with further language that it be restricted in use to the time as suggested by the applicant, which he believed was from 5:00 Saturday evening to 6:00 Sunday evening. He added that this would be with the understanding, as Councilor Harding suggested, that as the City observes the workings of this, and that this use could be retracted later; the City would retain that right based on potential safety issues as a result.

Councilor Harding, seconded the motion, as a tentative drafting of the wording with staff and City Attorney review so that it is done appropriately.

In response to a question from Councilor Wilson, City Attorney Ramis confirmed that rather than making a tentative decision tonight and voting that the staff bring a motion back to the City Council with the supporting findings.

Council discussed process. Councilor Woodruff noted that with the people who are attending the hearing, he would want to be able to let them know that the City Council decision would not change. What would be coming back to the City Council is the formality of the wording. City Attorney Ramis noted that a vote by City Council tonight would be a tentative decision subject to its final review and approval of the language "that we bring you."

Councilor Harding noted she would be on vacation on August 9. It appeared from the earlier Council discussion, it would be a "two-two" vote, unless someone changed their vote. Councilor Harding said she would be available by telephone. Councilor Wilson and Councilor Sherwood both indicated they would change their mind to support going forward with this.

Interim City Manager Prosser suggested the wording of the motion would be to tentatively approve the applicant's appeal of the

Hearings Officer decision and to direct staff to work with the applicant to return findings for final approval on August 9. Mayor Dirksen advised he would make the motion as suggested above by Interim City Manager Prosser. Councilor Harding seconded the motion.

The motion was approved by a unanimous vote of Council present:

Mayor Dirksen:	Yes
Councilor Harding:	Yes
Councilor Sherwood:	Yes
Councilor Wilson:	Yes
Councilor Woodruff	Yes

Council meeting recessed: 9:14 p.m.

Council meeting reconvened: 9:24 p.m.

5. PUBLIC HEARING – CONSIDER A RESOLUTION FINALIZING SANITARY SEWER REIMBURSEMENT DISTRICT NO. 34 (SW 117<sup>TH</sup> AVENUE)

- a. Mayor Dirksen opened the public hearing.
- b. City Engineer Duenas presented the staff report. Highlights of the information reviewed with Council are contained in a PowerPoint presentation, which is on file in the City Recorder's office.
- c. Public Testimony: None
- d. Staff Recommendation: City Engineer Duenas staff recommended that the City Council approve the proposed resolution to finalize Sewer Reimbursement District No. 34 as modified by the City Engineer's report.
- e. City Engineer Duenas reported that no comments were received from residents within the area. All resident within this area were notified of this hearing.
- f. Mayor Dirksen closed the public hearing.
- g. Council Consideration:

Motion by Councilor Wilson, seconded by Councilor Sherwood, to adopt Resolution No. 05-50.

RESOLUTION 05-50 – A RESOLUTION FINALIZING SANITARY  
SEWER REIMBURSEMENT DISTRICT NO. 34 (SW 117<sup>TH</sup>  
AVENUE) AND AMENDING THE PRELIMINARY CITY  
ENGINEER'S REPORT CONTAINED IN RESOLUTION NO. 05-17

The motion was approved by a unanimous vote of Council present:

Mayor Dirksen:	Yes
Councilor Harding:	Yes
Councilor Sherwood:	Yes
Councilor Wilson:	Yes
Councilor Woodruff	Yes

6. SECOND QUARTER COUNCIL GOAL UPDATE

- a. Interim City Manager Prosser presented the staff report updating the progress on City Council goals. A written summary of the goal status is on file in the City Council meeting packet.

Interim City Manager Prosser noted the following:

Goal 1 – Revitalize the Downtown, with the subtask of completing and implementing the Downtown Plan: The Downtown Task Force has continued to engage the community in discussions on this plan. The original plan was to submit the Downtown Plan for City Council approval in July; however, this has been delayed until September to allow for additional input and work on the Plan. The full implementation of the plan will occur over the next 10-20 years.

The second subtask for Goal 1 was for urban renewal implementation and developing a public outreach plan: The City hired two consultants. One consultant will assist with putting together the urban renewal plan; this is well underway. It is expected that the urban renewal plan will be presented to the City Council before September. A second consultant was hired to assist with the public outreach effort. The consultant will help produce materials explaining the urban renewal plan and the goals of the City Council to update the downtown. Also, part of this process is to conduct a survey of citizens to get their input and opinions on what is happening in the downtown area. This survey is being conducted now and results should be available shortly.

Interim City Manager Prosser noted that also under Goal 1, the 2005/06 Capital Improvement Program (CIP) includes approximately \$1.8 million for projects focused on the downtown. The CIP was

approved by City Council on July 1 and staff is now working on implementing the plan.

Goal 2 – Improve Highway 99W: Interim City Manager Prosser noted that a subtask was to identify specific projects to alleviate congestion on 99W. He reported that the McDonald Street/Highway 99 Intersection is being worked on and it should be completed in August.

Another project under Goal 2 includes the Hall Boulevard and 99W intersection. Interim City Manager Prosser noted this is a long-term project. He said the City has met with the County to review the preliminary plans along with some cost estimates. The estimates were higher than expected, but the City Council has indicated to the County that this is still a high priority and encouraged the County to proceed with this project even with the additional cost. The City will be working with the County to find the additional funding to make improvements to that intersection.

Interim City Manager Prosser noted that for the Greenburg Road/Highway 99W study, the consultant will be selected in early August, with the study beginning in late August.

For the Highway 99W Corridor Improvement Study, Interim City Manager Prosser said the City has submitted a grant application to the Oregon Department of Transportation for the development of a Highway Corridor Improvement and Management Plan. No word has yet been received on grant award; however, preliminary indications have been favorable.

Interim City Manager Prosser said that the Walnut Street Corridor Study will be held in abeyance until the Downtown Plan has been finalized to determine whether or not there will be a need to go ahead with this project.

Goal 3 – Address Growth: Interim City Manager Prosser noted the subtask was to revise the Comprehensive Plan for Tigard and, if funded, for Bull Mountain. Council added a staff position to the City's budget to begin work on the Comprehensive Plan Update. Staff is putting together the recruitment materials for this position. In addition, the City has had some preliminary discussions with the County about including the Bull Mountain area. The County has indicated that they are open to this. The County has developed issue papers for the Bull Mountain area and these papers state the County would like Tigard to do the study for this area. The City needs to find out who will pay for the study in the area. Interim City Manager Prosser said that when the County staff is present at the August 16

City Council meeting, this is something that should be discussed with the County staff.

A subsection of Goal 3 is Metro – seek changes – the changes sought would be to free Tigard's Comprehensive Plan process to respond to citizens' concerns. Also the Council goal included initiating a discussion with Metro regarding flexibility with density requirements. Council adopted a resolution on May 10, which was transmitted to Metro. In addition, some City Council members participated in a region-wide symposium on Metro and its land use program. No follow has been received from Metro. There will be another symposium, possibly in September. Mayor Dirksen noted that the time might come when it would be appropriate for the City to send Metro a follow-up letter advising that the City would like to enter into a dialogue with them to discuss the issues that were outlined in the above-mentioned resolution. Councilor Wilson said it might also be good to refine the City's concerns. He said it might take some staff time to assess where the City stands with regard to densities: Is the City is ahead or behind in Metro's projections? Councilor Wilson also noted it should be stated what flexibility the City might require with regard to densities. Interim City Manager Prosser said staff would schedule this for an upcoming City Council workshop, perhaps in September.

Another subsection of Goal 3 is to Identify and Acquire Parks and Open Space. Again, by approval of the Budget, Interim City Manager Prosser said there is money available for parks acquisition and development – approximately \$2.1 million. Staff and the Parks and Recreation Advisory Board are working on a recommended set of guidelines to help evaluate potential land acquisitions. The Public Works Department has received a number of suggestions for sites. In addition, recently the Public Works Director and Interim Finance Director began talks about looking at some financing options to help make the money that is available go even further.

A Review of Growth and Expenditures is a subsection of Goal 3. Interim City Manager Prosser noted this year's budget has been approved. The City Council has directed staff to prepare a resolution to establish a Financial Strategy Task Force and that Task Force has been formed. Its first meeting is scheduled for August 24. The Task Force is scheduled to report to the City Council no later than December 31, 2005.

The final subsection under Goal 3 is Graphic Identity (branding). Interim City Manager Prosser said a consultant has been selected to assist the City. The consultant has met with the City Council three

times and City Council has given input on designs. Additional workshop meetings between the Council and Consultant are scheduled.

b. Council Discussion

Councilor Woodruff noted it was good to receive the update. He noted that "Downtown" and "Growth" appeared to be more easily addressed than Highway 99W. He asked City Engineer Duenas about the Corridor Improvement Study that the City hoped to do with ODOT. He asked if there would be any impact with Bruce Warner leaving ODOT. Councilor Woodruff noted this was a project that would take a comprehensive look at the whole 99W issue. City Engineer Duenas said he did not think that a change in the top management for ODOT would make a difference. The ODOT staff is "driving" this project. City Engineer Duenas said staff expected the grant awards to be announced soon. City Engineer Duenas said that enough dollars were allocated in the CIP and this would go forward regardless of whether the grant is awarded for this project.

Mayor Dirksen noted while the goals were not specific, there are a lot of specific tasks identified within the goals. He said staff has been given a lot to do this year and they have "hit the ground running and have not stopped." Mayor Dirksen said the goals do compliment one another. He noted the goal to improve 99W and the goal to regulate growth contains a task to revisit the Comprehensive Plan. One of the areas for review in the Comprehensive Plan is the zoning around 99W and how this might alleviate congestion. He noted this is more of a long-term goal.

Councilor Wilson said he was very pleased with the progress that has been made. He said he thought fewer goals were easier to manage; however, the goals were very ambitious and the City was dealing with some fairly intractable problems and given the difficulty, the progress that has been made has been significant.

Councilor Sherwood noted she appreciated the hard work of City staff.

Councilor Harding thanked Interim City Manager Prosser noting she has heard from several Department Heads that he reminds them often of the Council's goals.

7. DISCUSSION OF THE TRANSPORTATION FINANCING STRATEGIES  
TASK FORCE (TFSTF) REPORT

- a. TFSTF Chair Buehner addressed the City Council. In addition, Task Force members Ralph Hughes and Bev Froude were present. Ms. Buehner gave a brief history about the reactivation of the TFSTF by the City Council to explore funding strategies to address the many transportation needs of the City that are not getting funded by relatively flat gas tax revenues and general fund revenues. During the first six months of meetings, the Task Force reviewed a variety of funding options and came back to the City Council in February with a recommendation for a gas tax and how this could be implemented. The City Council asked the Task Force to come up with a better strategy and to identify the types of projects. Since February, the idea of a grant came up with regard to the 99W study. Now, the Task Force has decided to wait until the study is done.

Task Force Chair Buehner noted that in the last 60 days, some additional items have come up. At the City Council's June 21 meeting with Washington County regarding the improvements to Hall Boulevard, the County indicated that they were not interested in funding a right-turn lane on the southbound portion of Hall as it turns west on Hwy. 99. She said there was a comment from Council members and from people in the community that this was something that needed to be looked at. There are also other issues – right of way may need to be purchased in connection with the Downtown Plan. The TFSTF is looking for guidance from City Council as to whether it wants the Task Force to continue work looking at projects that will need to be funded in a shorter timeframe or whether the City Council wants the Task Force to “sit back and go on leave” until the Highway 99W Corridor Management Study is completed.

b. Council Discussion

Councilor Wilson noted that he attended some of the Task Force meetings. He referred to the findings of the proposed gas tax. Task Force Chair Buehner said that theoretically a 2- to 3-cent/gallon tax would raise \$800,000 to \$1,000,000 in revenue a year. She the Task Force was suggesting that this would be set up in an MSTIP-plan model, which would be for five years with an automatic sunset clause unless it was reactivated. The plan would be based upon a specific list of projects. The Council had asked the Task Force to come up with a list of projects with a focus on 99W. Task Force Chair Buehner said the issue was that with the limited funding, the gas tax would not represent a huge amount of money, but it might provide opportunities to do one or two projects a year (or every other year) that would not otherwise be funded. She said the Task Force had planned to implement a public involvement program to inform the public about the proposal and to get input on projects. The Task Force did not



want to go ahead until they got a response from the City Council as to whether it wanted the Task Force to proceed.

Councilor Wilson noted that the City Council charged the Task Force with looking for funding sources. One idea was for a local gas tax. The Task Force studied this idea and looked into other cities that have implemented a gas tax to determine what the objections were. There was discussion about asking gas station owners about this plan; although, it is likely they would object to it. Councilor Wilson said that the decision was made that rather than "to raise a lot of hackles among people," since it is just an idea at this point, the Council decided to stay low key until it could be determined what some objections were in other cities where it had been tried. Councilor Wilson said the Task Force has wrapped up its work in doing this research – so now, it's an idea that is on the table. He said that he felt that given that almost all of the gas stations in Tigard are on Highway 99, that it would make sense to focus the improvements on Highway 99 where the money is generated. The advantage is that people who do not live in Tigard and use 99 would also help pay for its improvements. Councilor Wilson suggested it might be time to thank the Task Force for its work and give them a short vacation until the Highway 99 Study is started. At some point, when projects have been identified, then the Council might reconsider the gas tax idea.

In response to a question from Mayor Dirksen about what the Task Force's feeling was with regard to going on hiatus, Task Force Chair Buehner advised that the general consensus was to go on hiatus until the Hall Boulevard project came up. The Task Force wanted to come to City Council to get its opinion on whether this is something that needs to be addressed within a short timeframe.

Councilor Sherwood noted she likes to tie revenue to projects. She suggested putting things on hold until projects are identified on Highway 99.

Councilor Woodruff noted his appreciation of the Task Force members. He noted the needs and the universal issue of where to find funding. He said it is a conundrum to find out what is a fair way to try to raise additional revenue that will create the least amount of controversy and conflict. Councilor Woodruff said he appreciated the Task Force's exploration of this issue. He said he hoped Task Force members would continue to look at other cities to find possible means to generate additional revenue. He said he thought it makes sense to wait to find out what happens with the Corridor Study, if the desire is to connect funding with specific projects.

Task Force Chair Buehner said the gas tax was really the only effective way to have those who use the road, but do not live in Tigard, help pick up a piece of the cost of the road.

Mayor Dirksen said he appreciated the work of the Task Force. He said he was not inclined to have the Task Force meet only for the sake of meeting. He said he would rather give the Task Force some time off, but would want the members to come back when there are other tasks to be done.

Councilor Harding agreed that revenues should be tied to certain projects. She invited others to share any ideas they might have.

8. **CONSIDER AN ORDINANCE TO AMEND THE TIGARD MUNICIPAL CODE AUTHORIZING USE OF COMMUNITY SERVICE OFFICERS BY ADDING NEW PROVISIONS TO CHAPTERS 1.16.030 AND 10.32.030**

- a. Chief of Police Dickinson presented the staff report. Under TMC 1.16.030 there is specific reference to Code Enforcement Officer, but nothing for Community Service Officer. The proposed change would not alter the job description of the Community Service Officer (CSO). A CSO is a non-sworn officer of the police department; these staff members perform enforcement activities and tasks that free up police officers to perform duties requiring a higher level of law enforcement training.

b. **Council Consideration:**

Motion by Councilor Woodruff, seconded by Councilor Harding, to adopt Ordinance No. 05-08.

**ORDINANCE NO. 05-08 – AN ORDINANCE AMENDING THE TIGARD MUNICIPAL CODE (TMC) TO SPECIFICALLY AUTHORIZE THE USE OF COMMUNITY SERVICE OFFICERS BY ADDING NEW PROVISIONS TO TMC SECTIONS 1.16.030 AND 10.32.030**

The motion was approved by a unanimous vote of Council present:

Mayor Dirksen:	Yes
Councilor Harding:	Yes
Councilor Sherwood:	Yes
Councilor Wilson:	Yes
Councilor Woodruff	Yes

9. COUNCIL LIAISON REPORTS: None
10. NON AGENDA ITEMS: None
11. EXECUTIVE SESSION: Not held.
12. ADJOURNMENT: Motion by Councilor Wilson, seconded by Councilor Harding, to adjourn the meeting at 9:59 p.m.

The motion was approved by a unanimous vote of Council present:

Mayor Dirksen:	Yes
Councilor Harding:	Yes
Councilor Sherwood:	Yes
Councilor Wilson:	Yes
Councilor Woodruff	Yes

\_\_\_\_\_  
Catherine Wheatley, City Recorder

Attest:

\_\_\_\_\_  
Mayor, City of Tigard

Date: \_\_\_\_\_

I:\adm\cathy\ccm\2005\050726 final draft in progress.doc

Agenda Item No.: 4.2  
Meeting of: August 23, 2005

Packet Materials for the following Consent Agenda item:

## Adopt a Resolution Appointing Members to the City Center Advisory Committee

will be available in hard copy on Friday, August 19, 2005 and will  
be delivered to City Council in their Friday mail packet.

Contact the City Recorder's Office at 503-639-4171  
for more information.

AGENDA ITEM # 4.3  
FOR AGENDA OF August 23, 2005

CITY OF TIGARD, OREGON  
COUNCIL AGENDA ITEM SUMMARY

ISSUE/AGENDA TITLE Withdrawal of the Wall Street Railroad Crossing Application

PREPARED BY: A.P. Duenas DEPT HEAD OK: A.P. Duenas CITY MGR OK: cl

ISSUE BEFORE THE COUNCIL

Should Council authorize the withdrawal of the at-grade railroad crossing application for the Proposed Wall Street Local Improvement District (LID) Project?

STAFF RECOMMENDATION

That Council, by motion, authorize the withdrawal of the at-grade railroad crossing application for the Proposed Wall Street LID Project.

INFORMATION SUMMARY

The proposed Wall Street connects Hall Boulevard with Hunziker Street. The purchase agreement for the library property required the City to reasonably cooperate with the seller to obtain approval for an at-grade crossing of the existing railroad tracks that would make the connection between Hall and Hunziker possible and provide access to the private properties adjacent to the tracks. The City applied for an at-grade crossing of the railroad tracks in December 2003. Portland & Western Railroad objected to the at-grade crossing and the City requested a hearing to resolve the matter. Two prehearing meetings have been held to date and at least one more will be scheduled before a formal hearing date is set.

Portland & Western has provided information that it needs about a mile of track for its switching operations and uses the railroad tracks between Tiedeman Avenue and Bonita Road for this purpose. Because a crossing anywhere along this route would add further restrictions to their switching operations, Portland & Western strongly objects to the proposed crossing. Because of potential safety issues with at-grade crossings, ODOT (Oregon Department of Transportation) Rail also objects to adding a new crossing without closing an equivalent crossing elsewhere. The upcoming commuter rail project complicates the issue by adding commuter trains to the freight trains currently using the tracks through the City of Tigard thereby increasing the rail traffic once the project is completed.

Because the railroad company strongly objects to the crossing and can demonstrate that they would be adversely affected by the crossing, approval of the at-grade crossing application is unlikely on that factor alone. To continue the process to its inevitable conclusion would incur additional expenses. Withdrawal of the application before the hearing would avoid attorney and other expenses involved in a hearing and would be preferable to a decision denying the application. The City Attorney has advised staff and Council that the City obligations have been met with the efforts made to date and that it is no longer reasonable to continue with a process that almost

certainly would result in a denial. The withdrawal of the application does not mean the City could not again request a crossing at later time, if circumstances become much more favorable to its approval.

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#### OTHER ALTERNATIVES CONSIDERED

Continue with a hearing on the application until a judgment is rendered.

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#### VISION TASK FORCE GOAL AND ACTION COMMITTEE STRATEGY

The Wall Street connection from Hall Boulevard to Hunziker Street meets the Tigard Beyond Tomorrow goal of *Improve Traffic Flow* by creating an alternative route that bypasses the Hall/Hunziker/Scoffins signals and allows traffic to move directly to Hunziker Street from Hall Boulevard south of City Hall.

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#### ATTACHMENT LIST

None

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#### FISCAL NOTES

Although the costs for continuing with the formal hearing are hard to estimate, it could conceivably cost up to \$20,000 or more to continue with the process to its conclusion, assuming that no further appeals are contemplated. This cost includes staff time, City Attorney costs, expert testimony from the City's consultants, and miscellaneous other costs.

CITY OF TIGARD, OREGON  
COUNCIL AGENDA ITEM SUMMARY

ISSUE/AGENDA TITLE A Resolution Authorizing the MTIP Funding for the Greenburg Road Project to be Held in Reserve for a Future City Project

PREPARED BY: A.P. Duenas DEPT HEAD OK: A.P. Duenas CITY MGR OK: CP

ISSUE BEFORE THE COUNCIL

Should Council approve a resolution authorizing the MTIP (Metropolitan Transportation Improvement Program) funding for the Greenburg Road Project to be held in reserve for a future City project.

STAFF RECOMMENDATION

That Council, by motion, approve the attached resolution authorizing the MTIP funding for the Greenburg Road Project to be held in reserve for a future City project.

INFORMATION SUMMARY

The widening of Greenburg Road south of the Highway 217 Overcrossing (from Shady Lane to Tiedeman Avenue) was provided federal MTIP (Metropolitan Transportation Improvement Program) funding through Metro Priorities 2000 & 2002 MTIP project solicitations in the amount of \$660,000. The project was additionally funded in the amount of \$1,000,000 through the 2007-09 project selection process. Total federal MTIP funding is \$1,660,000. The original estimate for the project in 1999 was approximately \$2,500,000. Local funding match based on the original estimate would be approximately one-third of the total project cost.

The current estimated cost for the project has doubled to approximately \$5,000,000 since the initial funding was approved in 2000. The local funding match is now approximately two-thirds of the project cost. The estimated costs are extraordinarily high for such a short segment of street and Council has directed that the project be redefined or downsized. Metro has agreed to consider placing the funds in a reserve account to be applied to a high priority project in the vicinity of the Washington Square Regional Center, Highway 99W, or the Tigard Downtown (Town Center) area. Studies authorized in FY 2005-06 for the Highway 99W corridor and the Greenburg Road/Highway 99W intersection are expected to produce a list of high priority projects, from which an appropriate project can be selected for this funding. Council is requested, by resolution, to authorize the funds to be held in reserve until an appropriate project can be chosen.

OTHER ALTERNATIVES CONSIDERED

Reduce the scope of the original project to be commensurate with the MTIP funding available.

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## VISION TASK FORCE GOAL AND ACTION COMMITTEE STRATEGY

The widening of Greenburg Road between Shady Lane and Tiedeman Avenue meets the Tigard Beyond Tomorrow goals of *Improve Traffic Flow* and *Improve Traffic Safety*.

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## ATTACHMENT LIST

Resolution authorizing the MTIP funding for the Greenburg Road Improvement Project to be placed in a reserve account pending selection of a high priority City project in the future.

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## FISCAL NOTES

MTIP funds in the aggregate amount of \$1,660,000 would be placed in a reserve account at Metro until such time as a high priority project is identified. Studies authorized in FY 2005-06 for the Highway 99W corridor and the Greenburg Road/Highway 99W intersection are expected to produce a list of high priority projects, from which an appropriate project can be selected for this funding.



**CITY OF TIGARD, OREGON**

**RESOLUTION NO. 05-**

**A RESOLUTION AUTHORIZING MTIP FUNDING FOR THE GREENBURG ROAD PROJECT  
TO BE HELD IN RESERVE FOR A FUTURE CITY PROJECT**

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**WHEREAS**, the City has received federal funding for the Greenburg Road Improvement Project (Shady Lane to Tiedeman Avenue) from the Metro MTIP (Metropolitan Transportation Improvement Program) Priorities 2000, 2002, and 2007-09 solicitation processes; and

**WHEREAS**, the total MTIP funding approved is \$1,660,000; and

**WHEREAS**, the project originally estimated at \$2,500,000 in 1999 is now estimated at \$5,000,000; and

**WHEREAS**, the City's local match has increased from one-third of the total project cost to two-thirds of the current estimated cost; and

**WHEREAS**, Council has directed that the project be redefined or downsized to ensure that the federal funding contributes to a major share of the project cost; and

**WHEREAS**, Metro has agreed to consider placing the funds in a reserve account to be applied to a future high priority project in the vicinity of the Washington Square Regional Center, Highway 99W between the Tigard Town Center and the Regional Center, or the Tigard downtown area; and

**WHEREAS**, studies authorized in FY 2005-06 for the Highway 99W corridor and the Greenburg Road/Highway 99W intersection are expected to produce a list of high priority projects; and

**WHEREAS**, an appropriate project commensurate with the federal funding available can be selected from the high priority projects identified through these studies.

**NOW, THEREFORE, BE IT RESOLVED by the Tigard City Council that:**

**SECTION 1:** The placement of the MTIP funding for the Greenburg Road Improvement Project in a reserve account to be applied to a future high priority City project is hereby authorized.

**SECTION 2:** City staff is authorized to coordinate with Metro for the placement of these funds in a reserve account pending selection of a future project.

**SECTION 3:** This resolution is effective immediately upon passage.

**PASSED:** This \_\_\_\_\_ day of \_\_\_\_\_ 2005.

\_\_\_\_\_  
Mayor - City of Tigard

**ATTEST:**

\_\_\_\_\_  
City Recorder - City of Tigard

\\eng\gus\resolutions\8-23-05 resolution authorizing mtlp funds for the greenburg road project to be held in reserve.doc

CITY OF TIGARD, OREGON  
COUNCIL AGENDA ITEM SUMMARY

ISSUE/AGENDA TITLE Introduction of new Tigard Chamber of Commerce Executive Director, Jeremy Monlux, and President, Pam Brown.

PREPARED BY: Bill Dickinson DEPT HEAD OK WMD CITY MGR OK cl

ISSUE BEFORE THE COUNCIL

The Tigard Chamber of Commerce now has a new President and a new Executive Director. Chief Dickinson would like to introduce to the Council Jeremy Monlux, the Chamber of Commerce Executive Director and Pam Brown, the new Chamber President.

This is for information only, no action is required by City Council. These new members of the Chamber of Commerce would like to briefly share their thoughts on how the Chamber will continue to work in this community.

STAFF RECOMMENDATION

N/A

INFORMATION SUMMARY

The City of Tigard assigns a City staff member to serve as an ex officio member of the Chamber of Commerce Board of Directors and has traditionally tried to maintain a good relationship with the Chamber of Commerce and to keep the lines of communication open between the business community and the City.

This introduction of the new President and Executive Director will offer an opportunity for them to share their goals and viewpoints, as well as offering the Council members a chance to ask questions and share insights.

OTHER ALTERNATIVES CONSIDERED

N/A

VISION TASK FORCE GOAL AND ACTION COMMITTEE STRATEGY

Community Character & Quality of Life Goals: Communication Goals #1 and #2; Central Business District Goal #1; and Community Events Goals #1 and #2. In the Growth and Growth Management section, Goal #5; and Public Safety Goal #1.

ATTACHMENT LIST

No attachments.

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FISCAL NOTES

No cost associated with this item.

AGENDA ITEM # 6  
FOR AGENDA OF August 23, 2005

CITY OF TIGARD, OREGON  
COUNCIL AGENDA ITEM SUMMARY

ISSUE/AGENDA TITLE Resolution Setting Forth Land Acquisition Guidelines to be Considered by Council When Acquiring Parks and Greenway Properties

PREPARED BY: Dennis Koellermeier DEPT HEAD OK  CITY MGR OK 

ISSUE BEFORE THE COUNCIL

Should the Council adopt a resolution setting forth land acquisition guidelines to be considered by Council when acquiring parks and greenway properties?

STAFF RECOMMENDATION

Adopt resolution setting forth land acquisition guidelines to be considered by Council when acquiring parks and greenway properties.

INFORMATION SUMMARY

The attached resolution, adopting guidelines developed by Council to use as Council considers the locations and acquisitions of parks and greenway properties, was developed as an outgrowth of a Council discussion on establishing guiding principles for purchasing land. The Park and Recreation Advisory Board (PRAB) has reviewed and approved, in principle, the resolution. The guidelines in the resolution are as follows:

- 1: Evaluate all park and greenway donation offers and potential property purchases and submit a staff recommendation to the City Council for each donation and/or property purchase,
- 2: Prioritize the search and evaluation of future park sites to those areas identified as currently underserved (the City's adopted Park System Master Plan defines "underserved" areas as areas not within one-half mile of a neighborhood park),
- 3: Allocate use of City general funds for purchases that reduce current park deficiencies and use park SDCs for acquiring land needed for current and future growth,
- 4: Look to serve those areas which will become park deficient over time,
- 5: Look to purchase or obtain parcels of land with some size as compared to multiple, non-contiguous, small parcels if possible,
- 6: Consider and evaluate the acquisition of suitable property outside the City Limits, and
- 7: Consider land banking adequate property for future park development.

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OTHER ALTERNATIVES CONSIDERED

Not adopt resolution.

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VISION TASK FORCE GOAL AND ACTION COMMITTEE STRATEGY

2005 Council Goal to Address Growth – “Identify and Acquire parks and open spaces”

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ATTACHMENT LIST

Attachments:

- Resolution - “A resolution adopting guidelines to use in the evaluation of the location and acquisition of park and greenway properties.”

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FISCAL NOTES

On June 14, 2005, Council approved and adopted the FY 2005-06 Budget. The budget contains a \$2,144,025 appropriation for park acquisition and development.

CITY OF TIGARD, OREGON

RESOLUTION NO. 05-

A RESOLUTION ADOPTING GUIDELINES TO USE IN THE EVALUATION OF THE LOCATION AND ACQUISITION OF PARK AND GREENWAY PROPERTIES

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WHEREAS, the Tigard City Council recognizes the need for additional park and greenway properties in the Tigard community; and

WHEREAS, past City Councils elected to not purchase or secure land for parks and greenways outside the city limits; and

WHEREAS, the Tigard City Council has adopted an annual goal for 2005 to "Identify and Acquire Parks and Open Space (greenway); and

WHEREAS, the Parks and Recreation Advisory Board has also been given the task to: a.) evaluate potential park and greenway needs, b.) obtain public input and support, and c.) make recommendations to the City Council relating to the funding of these needs; and

WHEREAS, the City Council wishes to adopt guidelines and an evaluation process to review offers of donated property, and/or to accept property offered by developers in lieu of System Development Charges (SDCs) for parks and greenways; and

WHEREAS, the City Council recognizes that state law requirements set forth that new development cannot be forced to pay for any current deficiencies Tigard has in its parks and greenway inventory.

NOW, THEREFORE, BE IT RESOLVED by the Tigard City Council that the Parks and Recreation Advisory Board and staff are directed to:

SECTION 1: Evaluate all park and greenway donation offers and potential property purchase and submit a staff recommendation to the City Council for each donation and/or property purchase.

SECTION 2: Prioritize the search and evaluation of future park sites to those areas identified as currently underserved (the City's adopted Park System Master Plan defines "underserved" areas as areas not within one-half mile of a neighborhood park).

SECTION 3: Allocate use of City general funds for purchases that reduce current park deficiencies and use park SDCs for acquiring land needed for current and future growth.

SECTION 4: Look to serve those areas which will become park deficient over time.

SECTION 5: Look to purchase or obtain parcels of land with some size as compared to multiple, non-contiguous, small parcels if possible.

SECTION 6: Consider and evaluate the acquisition of suitable property outside the City limits.

SECTION 7: Consider land banking adequate property for future park development.

SECTION 8: This resolution is effective immediately upon passage.

PASSED: This \_\_\_\_\_ day of \_\_\_\_\_ 2005.

\_\_\_\_\_  
Mayor - City of Tigard

ATTEST:

\_\_\_\_\_  
City Recorder - City of Tigard



AGENDA ITEM # 7  
FOR AGENDA OF Aug. 23, 2005

CITY OF TIGARD, OREGON  
COUNCIL AGENDA ITEM SUMMARY

ISSUE/AGENDA TITLE Library Operations Update

PREPARED BY: Margaret Barnes DEPT HEAD OK MB CITY MGR OK CR

ISSUE BEFORE THE COUNCIL

Update of library operations

STAFF RECOMMENDATION

The staff recommends opening on Thursdays from 1 p.m. to 8 p.m. beginning in October. The result would be to cut 3 hours per week from the Library's schedule—an overall reduction from its current 58 hours to 55 hours per week.

INFORMATION SUMMARY

When the library reopened on Sundays in March 2005, the understanding was that money from the Houghton bequest would only be used through the end of Fiscal Year '04-'05. The library's future schedule would depend upon its future budget.

Sundays have been so popular at the library that the Library Board and staff are committed to staying open on Sundays and closing on alternative days. In June 2005, Sundays experienced the busiest hourly circulation, averaging 384 items per hour. The number of visits totaled 33,833 in June ---- 49.3 percent over June 2004. Given this evidence of the public's continued support of the library, it is a difficult time to contemplate reducing hours.

The following considerations were taken into account:

- 1) Inconvenience the public as little as possible.
- 2) Stay open during times when we experience peak usage.
- 3) Maximize access to the library in order to enhance public enjoyment of the Summer Reading program for both children and adults.
- 4) Maintain consistency in the schedule as much as possible.
- 5) Maintain a 7-day per week schedule.

As a result, the recommendation of the Board and staff is to close three hours a week on Thursday mornings beginning in October. This proposal will allow us to maintain current hours for the first quarter of Fiscal Year '05-'06. Beginning October 1, the Library's schedule would be:

Sundays: 1 p.m.-5 p.m.  
Mondays 10 a.m. - 8 p.m.  
Tuesdays 10 a.m. - 8 p.m.  
Wednesdays 10 a.m. - 8 p.m.

Thursdays 1 p.m.-8 p.m.  
Fridays 10 a.m.-5 p.m.  
Saturdays 10 a.m. - 5 p.m.

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OTHER ALTERNATIVES CONSIDERED

- 1) Close Monday mornings.
- 2) Close Friday mornings.

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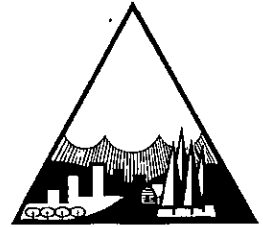
VISION TASK FORCE GOAL AND ACTION COMMITTEE STRATEGY

Goal #3: Adequate facilities are available for efficient delivery of life-long learning programs and services for all ages.

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FISCAL NOTES

# MEMORANDUM



TO: Craig Prosser, Interim City Manager

FROM: Margaret Barnes, Library Director

RE: Library Hours

DATE: 8/1/05

After much deliberation, as well as discussion with the Library Board, we have decided to close the library on Thursday mornings beginning Oct. 1. The library would open up at 1 p.m. on Thursdays.

Starting Oct. 1, the Library schedule will be:

Sundays: 1 p.m.- 5 p.m.

Mondays-Wednesdays: 10 a.m.-8 p.m.

Thursdays: 1 p.m.- 8 p.m.

Fridays-Saturdays: 10 a.m.-5 p.m.

This will be the second time in 2005 that we have adjusted hours. When we opened on Sundays in March, it was through the generosity of the Tigard family, who allowed us to use funds from the Grace Tigard Houghton bequest fund. Those funds allowed the library to re-open on Sundays for four months until the end of the fiscal year. Sundays have become one of the most popular days at the library. In June we experienced our busiest circulation per hour on Sundays at 384 items per hour. In the face of such popularity, we are committed to remaining open on Sundays.

During the bond measure campaign for the new library, the public asked repeatedly if we would be able to staff and maintain a library more than 3 times larger than the old one. We responded that we would increase staff incrementally as the budget process allowed. At the time we did not anticipate losing funding from the county because historically the countywide library levies passed easily.

The FY 2005-06 budget did not provide funds for additional regular staff. The number of visits by library users totaled 33,833 in June---49.3 percent over June 2004. Given this evidence of the public's continued support of the library, it is a difficult time to contemplate reducing hours. In order to maintain an adequate level of service, however, we reluctantly reached the conclusion that we would need to close three hours per week.

The following considerations were taken into account:

- 1) Inconveniencing the public as little as possible.
- 2) Staying open during times when we experience peak usage.
- 3) Maximizing access to the library in order to enhance public enjoyment of the summer reading programs for children and adults.
- 4) Maintaining consistency in the schedule as much as possible.
- 5) Remaining open seven days a week.

We considered closing on Monday or Friday mornings, but the statistics did not support that proposal. Both days are more popular than Thursdays. Consequently, we recommend closing on Thursday mornings. Weekday evenings are also very busy. Staying open then is also a priority. We anticipate that the new schedule will remain in effect for the rest of the fiscal year.

AGENDA ITEM # 8  
FOR AGENDA OF 8/23/2005

CITY OF TIGARD, OREGON  
COUNCIL AGENDA ITEM SUMMARY

ISSUE/AGENDA TITLE Adoption of Findings Approving the Appeal for the Tigard First Baptist Church

PREPARED BY: Morgan Tracy DEPT HEAD OK [Signature] CITY MGR OK CP

ISSUE BEFORE THE COUNCIL

This matter is being brought back to City Council following the public hearing on the applicant's appeal to adopt findings, approving the appeal and permitting an additional limited use access on SW Gaarde. The Council will need to review the findings as amended and adopt the draft resolution.

STAFF RECOMMENDATION

Staff recommends that, if Council determines the revised findings accurately reflect their discussion from the July 26, 2005 hearing, Council should adopt the revised findings and approve the resolution.

INFORMATION SUMMARY

This matter is being scheduled following the public hearing regarding the applicant's appeal on July 26<sup>th</sup> after being continued from the July 12, 2005 hearing. This appeal was centered around the Hearings Officer's denial of the applicant's request for approval of an adjustment to allow an access on SW Gaarde that does not conform to the 600 foot driveway spacing standards along an arterial street. The appellant supplied Council with additional evidence and testimony. Council deliberated the merits of the appeal at its July 26<sup>th</sup> hearing, and found on balance that the church had met the burden of proof to grant a limited use access. To mitigate for potential traffic issues, the Council required that the access be gated to prevent general public access, but that church patrons could use the access in conjunction with church services, and the gate may be opened only from 4:00 pm Saturdays until 9:00 pm Sundays, from 4:00 pm Christmas Eve until 1:00 am Christmas Day, and from 4:00 pm Good Friday until 1:00 am the day following. In order to prevent discrepancies between different religious institutions' observation of Christmas and Easter, the city attorney has recommended that the words "as observed by the Tigard First Baptist Church" be incorporated into the condition.

OTHER ALTERNATIVES CONSIDERED

Reject the amended findings or modify the amended findings.

VISION TASK FORCE GOAL AND ACTION COMMITTEE STRATEGY

N/A

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ATTACHMENT LIST

1. "Final Draft" City Council Resolution.  
Exhibit A – Amendment to Condition # 30  
Exhibit B – Amended Findings  
Exhibit C – Hearings Officer's Final Order
- 

FISCAL NOTES

Appeal fees have been paid by the appellant.

CITY OF TIGARD, OREGON

RESOLUTION NO. 05-\_\_\_\_\_

A RESOLUTION AND FINAL ORDER APPROVING THE TIGARD FIRST BAPTIST CHURCH CONDITIONAL USE PERMIT (CUP) 2004-00005/SENSITIVE LANDS REVIEW (SLR) 2005-00005/SENSITIVE LANDS REVIEW (SLR) 2005-00006 AND ADJUSTMENT (VAR) 2005-00016, ADOPTING FINDINGS AND IMPOSING CONDITIONS.

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WHEREAS, the Tigard Hearings Officer reviewed this case at a public hearing at his meeting of April 25, 2005; and

WHEREAS, the Hearings Officer adopted findings approving the requested conditional use permit and sensitive lands permits, subject to additional conditions of approval; and

WHEREAS, the Hearings Officer adopted findings denying the requested adjustment to access spacing standards; and

WHEREAS, an appeal was filed on May 25, 2005 by the owner and applicant, on the basis that the Hearings Officer misconstrued the applicable law; and

WHEREAS, the City Council held a public hearing on the appeal of the approval on July 12, 2005; and

WHEREAS, the City Council on July 12, 2005 continued the public hearing on the appeal of the approval, and extended the 120-day rule to August 17, 2005 upon motion of the applicant; and

WHEREAS, the City Council on July 26, 2005 reviewed the testimony, submittals, and staff report, and reviewed findings and conditions of approval that were contained within the Hearings Officer's final order; and

WHEREAS, the City Council agreed that Condition #30 should be modified as described in Exhibit A, to require an emergency access to SW Gaarde as requested by TVFR; and

WHEREAS, the City Council concluded that the appeal demonstrated that errors in the Hearings Officer's decision occurred and that the applicant's requested adjustment to the access spacing requirement to allow a limited public use access to SW Gaarde Street was supported by substantial evidence in the record; and

WHEREAS, the City Council agreed that Condition #30 should be modified as described in Exhibit A, to permit a public use access to SW Gaarde Street limited to Saturday evenings, Sundays, and Christmas Eve and Good Friday as observed by the Tigard First Baptist Church;

NOW, THEREFORE, BE IT RESOLVED by the Tigard City Council that:

SECTION 1: The Tigard City Council approves applications CUP 2004-00005/SLR2005-00005/SLR2005-00006 and VAR2005-00016 - First Baptist Church of Tigard -subject to the conditions of approval stated in the Hearings Officer's final order dated May 12, 2005, attached hereto as Exhibit C and incorporated herein by this reference with the exception of the changes to Condition #30, attached hereto as Exhibit A, to reflect the requirements for an emergency and limited public use access to be provided to SW Gaarde.

SECTION 2: The Tigard City Council adopts the findings and analysis stated in the Hearings Officer's final order, attached hereto as Exhibit C and incorporated herein by reference, with the exception of Paragraphs C.3, D and E in the Hearings Officer's final order. The City Council adopts the findings and analysis of the amended Paragraphs C.3, D and E, attached hereto as Exhibit B and incorporated herein by reference.

SECTION 3: This resolution is effective immediately upon passage.

PASSED: This \_\_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
Mayor - City of Tigard

ATTEST:

\_\_\_\_\_  
City Recorder - City of Tigard



Text Amendment to Condition Number 30  
Casefile CUP2004-00005, Tigard First Baptist Church Expansion

Original Text:

30. The existing driveway on Gaarde shall be removed prior to final inspection on Phase 1.

Amendment:

30. The existing driveway on Gaarde shall be removed prior to final inspection on Phase 1. A restricted emergency access from SW Gaarde Street to the lower parking area shall be constructed as required by Tualatin Valley Fire & Rescue. Appropriate measures (e.g. Knox box locked gate) shall be incorporated to prevent general public use of this access. This access also may be used by the public in conjunction with church services, and may be opened only from 4:00 pm Saturdays until 9:00 pm Sundays, from 4:00 pm Christmas Eve until 1:00 am Christmas Day, and from 4:00 pm Good Friday until 1:00 am the day following (as observed by Tigard First Baptist Church).

Text Amendment to Hearings Officer's Final Order  
Casefile CUP2004-00005, Tigard First Baptist Church Expansion

Text as Amended:

### C. DISCUSSION

3. The applicant requested an adjustment to the intersection spacing standards of TDC § 18.705.030.H.3 to allow driveway access to Gaarde Street.

a. TDC § 18.705.020.H.3 requires a minimum 600 feet between driveway and street intersections on arterials such as Gaarde Street. The applicant's existing Gaarde Street access is located roughly 80 feet from the intersection of SW 110<sup>th</sup> Avenue and SW Gaarde Street. The applicant proposed to close the existing access and construct a new driveway onto Gaarde Street located roughly 220 feet west of the 110<sup>th</sup> Avenue/SW Gaarde Street intersection.

b. TDC § 18.370.020.C.5 authorizes the City Council to approve an adjustment to the intersection spacing requirements if the application complies with the approval criteria of TDC § 18.370.020.C.5.b. In this case, the Council found that the applicant bore the burden of proof and showed that the application complies with TDC § 18.370.020.C.5. The Council finds there is no alternative access available to the site from SW 110<sup>th</sup> Avenue because the site already has an existing access from SW 110<sup>th</sup> Avenue. The Council finds that a street with an existing access cannot be an alternative access.

c. Prohibiting access to Gaarde Street will increase the traffic volume and congestion on 110<sup>th</sup> Avenue and the proposed site driveways, since all vehicles must use the driveways onto this street to enter and leave the site. The additional traffic and congestion will likely be perceptible to area residents and church members, and, although it will not exceed the capacity of streets, the additional traffic will make the intersection of SW 110<sup>th</sup> Avenue and Gaarde Street more hazardous, based on Mr. Charboneau's expert testimony.

i. Mr. Charboneau testified to the Hearings Officer that elimination of the Gaarde Street driveway will cause "several detriments . . ."<sup>1</sup> He testified to the City Council that it will be more hazardous for church members to leave the site through the SW 110<sup>th</sup> Avenue/Gaarde Street intersection than to leave the site using the proposed driveway on Gaarde Street. He testified there is inadequate sight distance to the east at the SW 110<sup>th</sup> Avenue/Gaarde Street intersection, and there is adequate sight distance to the east at the proposed driveway on Gaarde Street.

d. The proposed parking lot design without access to Gaarde Street will create a long dead-end parking lot and vehicle access way. This dead-end access way will increase emergency response times and restrict emergency vehicle access to certain portions of the site. The City Council finds that the applicant shall be required to provide an emergency vehicle access to Gaarde Street as required by the Tualatin Valley Fire District. A condition of approval is warranted to that effect.

e. The fact that the Church will generate the majority of its traffic on Saturday evenings and Sundays, when traffic volumes on Gaarde Street are lower, is relevant to the approval criterion in TDC § 18.370.020.C.5.b(5), because use of the proposed Gaarde Street access for church services only

<sup>1</sup> He testified that closure of the Gaarde Street driveway, will cause "[a]dditional impacts to the [110<sup>th</sup> Avenue/Gaarde Street] intersection and 110<sup>th</sup> Avenue . . . longer delays in accessing the site . . . emergency vehicles will need to undertake a longer route . . . [and] the residential neighborhood . . . will experience additional traffic circulation and impacts."

will result in safer access. A condition of approval restricting that access to Saturday evenings, Sundays, Christmas Eve, and Good Friday, is warranted to that effect.

f. The existence of other driveways on Gaarde Street that do not meet the intersection spacing requirements is irrelevant. The City has no authority to close existing nonconforming driveways. However, the City can require that the applicant close its existing Gaarde Street driveway when its proposed new Gaarde Street driveway is installed.

#### **D. CONCLUSIONS**

The City Council concludes that the proposed conditional use permit and sensitive lands reviews do or can comply with the applicable approval criteria and standards of the Tigard Community Development Code, provided development that occurs after this decision complies with local, state, and federal laws and with conditions of approval warranted to insure such compliance occurs. The Council further finds that the adjustment complies with the applicable approval criteria and is approved. The decision of the Hearings Officer denying the adjustment is reversed.

#### **E. DECISION**

The City Council hereby approves CUP 2004-00005, SLR 2005-00005 and SLR 2005-00006, and VAR 2005-00016 (Tigard First Baptist Church), subject to the following conditions of approval.



120 DAYS = 8/3/2005 (Includes a 7-day extension)  
DATE OF FILING: 5/12/2005

## CITY OF TIGARD

Washington County, Oregon

## NOTICE OF FINAL ORDER BY THE HEARINGS OFFICER

Case Numbers:	CONDITIONAL USE PERMIT (CUP) 2004-00005
	SENSITIVE LANDS REVIEW (SLR) 2005-00005
	SENSITIVE LANDS REVIEW (SLR) 2005-00006
	DEVELOPMENT ADJUSTMENT (VAR) 2005-00016
Case Name:	FIRST BAPTIST CHURCH OF TIGARD
Name of Owner:	The First Baptist Church of Tigard
Name of Applicant:	Architect LA Attn: Larry Abell
Address of Applicant:	805 SE Sherman Street Portland, OR 97214
Address of Property:	11075 SW Gaarde Street Tigard, OR 97223
Tax Map/Lot Nos.:	Washington Co. Tax Assessor's Map No. 2S103DC, Tax Lot 1100

A FINAL ORDER INCORPORATING THE FACTS, FINDINGS AND CONCLUSIONS **APPROVING** A REQUEST FOR A CONDITIONAL USE PERMIT AND TWO SENSITIVE LANDS REVIEWS, AND **DENYING** THE REQUEST FOR AN ADJUSTMENT. THE CITY OF TIGARD HEARINGS OFFICER HAS REVIEWED THE APPLICANT'S PLANS, NARRATIVE, MATERIALS, COMMENTS OF REVIEWING AGENCIES, THE PLANNING DIVISIONS STAFF REPORT AND RECOMMENDATIONS FOR THE APPLICATION DESCRIBED IN FURTHER DETAIL IN THE STAFF REPORT. THE HEARINGS OFFICER HELD A PUBLIC HEARING ON **APRIL 25, 2005** TO RECEIVE TESTIMONY REGARDING THIS APPLICATION. THIS DECISION HAS BEEN BASED ON THE FACTS, FINDINGS AND CONCLUSIONS CONTAINED WITHIN THIS FINAL ORDER.

**Request:** ➤ The applicant is seeking Conditional Use Permit approval for a three-phased expansion. Phase 1 consists of new on site parking for 134 cars. No new access to SW Gaarde Street is proposed with this phase, but Sensitive Lands Reviews are required for the drainageway and step slopes present on site. Phase 2 consists of a new two-story 18,000 square foot multi purpose gymnasium building. With this phase, the 2,300 square foot "Bolt Hall" will be demolished and replaced by an additional 47 parking spaces. Phase 3 consists of a new two-story 4,450 square foot addition between the existing church and ministry buildings. This phase will also reconfigure the existing parking lot to provide access to the new addition, closing the existing access on Gaarde Street, and constructing a new access from Gaarde Street to the new parking lot in Phase 1. An Adjustment to the 600-foot access spacing standards is also required. **At the close of the record, the Hearings Officer held the record open for one week then approved the Conditional Use Permit and Sensitive Lands Reviews, subject to the conditions of approval within this final order; and denied the Adjustment request finding that the applicant failed to bear the burden of proof that the Adjustment complies with the applicable approval criteria.**

**Zone:** R-3.5: Low-Density Residential District. **Applicable Review Criteria:** Community Development Code Chapters 18.330, 18.360, 18.370, 18.390, 18.510, 18.705, 18.725, 18.745, 18.755, 18.765, 18.775, 18.780, 18.790, 18.795 and 18.810.

**Action:** ➤ ☐ Approval as Requested ☒ Approval with Conditions ☐ Denial

**Notice:** Notice was published in the newspaper and mailed to:  
☒ Owners of Record Within the Required Distance ☒ Affected Government Agencies  
☒ Interested Parties ☒ The Applicants and Owners

The adopted findings of fact and decision can be obtained from the Planning Division/Community Development Department at the City of Tigard City Hall.

**Final Decision:**

**THIS DECISION IS FINAL ON MAY 12, 2005 AND BECOMES  
EFFECTIVE ON MAY 27, 2005 UNLESS AN APPEAL IS FILED.**

**Appeal:**

The decision of the Review Authority is final for purposes of appeal on the date that it is mailed. Any party with standing as provided in Section 18.390.040.G.1. may appeal this decision in accordance with Section 18.390.040.G.2. of the Tigard Community Development Code which provides that a written appeal together with the required fee shall be filed with the Director within ten (10) business days of the date the notice of the decision was mailed. The appeal fee schedule and forms are available from the Planning Division of Tigard City Hall, 13125 SW Hall Boulevard, Tigard, Oregon 97223.

**THE DEADLINE FOR FILING AN APPEAL IS 5:00 PM ON MAY 26, 2005.**

**Questions:** If you have any questions, please call the City of Tigard Planning Division at (503) 639-4171.

**BEFORE THE LAND USE HEARINGS OFFICER  
FOR THE CITY OF TIGARD, OREGON**

Regarding an application by Larry Abel on behalf of the) **FINAL ORDER**  
Tigard First Baptist Church for a conditional use permit)  
and other approvals to expand an existing church at ) **CUP 2004-00005<sup>1</sup>**  
11075 SW Gaarde Street in the City of Tigard, Oregon ) **(Tigard First Baptist Church)**

**A. SUMMARY**

1. The applicant, Tigard First Baptist Church represented by Larry Abel, requests approval of a conditional use permit (CUP) for expansion of an existing church, located at 11075 SW Gaarde Street; also known as tax lot 01100, WCTM 2S103DC. The site is the southwest quadrant of the intersection of SW 110<sup>th</sup> Avenue and Gaarde Street. The site is zoned R-3.5 (Low Density Residential). The site is currently developed with a roughly 6630 square foot church, 3564 square foot ministry building and a 2300 square foot "Bolt Hall," 134 automobile parking spaces and landscaping. The applicant requests sensitive lands reviews for impacts to the drainageway and steep slopes on site. SLR2005-00005 and SLR2005-00006. The applicant proposes to construct a 22,500 square foot expansion of the existing church and associated parking in three phases.

a. In Phase 1 the applicant proposed to construct a new 134-space parking lot in the east and south portions of the site, including a new access to SW 110<sup>th</sup> Avenue.

b. In Phase 2 the applicant proposed to construct a new 4450 square foot two-story, addition between the existing church and ministry buildings, replacing a portion of the existing parking lot, reconfigure the existing parking lot to provide access to the new addition and relocate the existing driveway on Gaarde Street to the south.

c. In Phase 3 the applicant proposed to demolish "Bolt Hall" and construct a new 18,000 square foot two-story multi purpose gymnasium building southeast of the Phase 2 addition. The applicant will also construct an additional 47 parking spaces near the center of the site.

2. The applicant also requests an adjustment to reduce the 600-foot intersection spacing requirements on Gaarde Street to 130 feet to relocate an existing driveway. VAR2005-00016.

3. City Hearings Officer Joe Turner (the "hearings officer") held a duly noticed public hearing regarding the application. City staff recommended that the hearings officer approve the CUP and Sensitive Lands Reviews, subject to conditions. Staff recommended the hearings officer deny the adjustment request. See the Staff Report to the Hearings Officer dated April 18, 2005 (the "Staff Report"). The applicant's representative accepted the findings and conditions of approvals recommended by City staff with certain

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<sup>1</sup> This decision also addresses SLR2005-00005, SLR2005-00006 and VAR2005-00016.

exception. One person testified orally and in writing in support of the application. Two other persons testified orally with questions and concerns. The hearings officer held open the public record for one week to allow the applicant to submit a final argument. The principal disputed issues in this case include the following:

a. Whether the proposed development will generate excessive noise, lights, pollution and other impacts on abutting residential properties that cannot be adequately mitigated;

b. Whether the applicant sustained the burden of proof that the proposed adjustment to the intersection spacing requirements complies with the applicable approval criteria in TDC 18.370.020.C(5)(b); and

c. Whether the applicant can be required to ensure that adequate sight distance is available at the intersection of 110<sup>th</sup> Avenue and Gaarde Street.

4. In this final order, the hearings officer approves the conditional use permit and sensitive lands review based on the findings and conclusions provided and incorporated herein and subject to conditions at the end of this final order. The hearings officer denies the adjustment.

## **B. HEARING AND RECORD HIGHLIGHTS**

1. The hearings officer received testimony at the public hearing about this application on April 25, 2005. All exhibits and records of testimony are filed with the Tigard Department of Community Development. At the beginning of the hearing, the hearings officer made the declaration required by ORS 197.763. The hearings officer disclaimed any *ex parte* contacts, bias or conflicts of interest. The following is a summary by the hearings officer of selected testimony offered at the public hearing in this matter.

2. City planner Morgan Tracy summarized the Staff Report.

a. He noted that the applicant's narrative is inconsistent with the development and tree removal plans regarding which trees will be removed and retained. Condition of approval 4 require that the applicant submit a revised tree removal plan that clearly identifies which trees will be removed and retained. He noted that the applicant will plant additional trees and shrubs on the site, including 10 douglas fir trees within the stream buffer, which will enhance the existing stream buffer and mitigate impacts on abutting residents to the south.

b. He noted that there is an existing bike/pedestrian path easement on the southern portion of the site. The proposed development encroaches into a portion of the path. The applicant has proposed to dedicate a blanket pathway easement over the entire sensitive area to compensate for impacts to the existing path easement. However construction of a path within the sensitive area will impose additional costs on the City. Therefore the applicant should be required to retain the existing easement or obtain any required approvals and construct the portion of the pathway in the realigned easement.

c. He testified that the applicant did submit a lighting plan for the site. However staff have not had an opportunity to review the plan in detail. Therefore he requested the hearings officer retain condition of approval 3.

d. He testified that the proposed development does not provide enough off-street parking to comply with the Code. The applicant is required to provide 185 parking spaces and 6 ADA accessible spaces. The applicant should be required to demonstrate that adequate parking, including ADA accessible spaces, is available to accommodate each phase of the proposed development. This is required by condition 2.D.

e. He recommended the hearings officer deny the proposed adjustment to the intersection spacing requirements. He argued that adequate alternative access points available on 110<sup>th</sup> Avenue. Therefore the adjustment request does not comply with TDC 18.370.020.C(5)(b)(2).

f. He testified that the applicant is not required to provide a separate drainage tract.

g. He argued that the applicant should be required to demonstrate that adequate sight distance is available at the intersection of 110<sup>th</sup> Avenue and Gaarde Street. Proportionality is irrelevant to this safety issue.

h. He requested that the hearings officer allow emergency vehicle access to Gaarde Street if required by the Tualatin Valley Fire District.

3. Architect Larry Abel, civil engineer Carl Jensen, traffic engineer Frank Charbonneau and project manager Jim Wilson testified for the applicant.

a. Mr. Abel submitted a revised site plan dated April 25, 2005, with revised phasing. The applicant reversed proposed phases 2 and 3 to allow the applicant to construct the gymnasium first, as Phase 2. He accepted the findings and conditions of approval in the Staff Report with certain exceptions.

i. He testified that the applicant will retain the existing trail easement on the site. The applicant will revise the design of the lower parking lot to avoid impacts to the easement.

ii. He testified that the applicant will design the parking lots to ensure that a sufficient number of off-street parking spaces are available to serve the development proposed in each individual phase.

iii. He testified that the applicant will try to save as many existing trees on the site as possible. The applicant's engineer will review the design and location of the existing sanitary sewer line during final engineering to determine if it can accommodate the proposed expansion. However the applicant may need to lower the sewer line to serve the proposed development, which could impact trees within the sensitive area. The applicant will not remove trees or other vegetation within the stream buffer unless it is absolutely necessary. The applicant will also save as many trees as possible on the upland portion of the site. The applicant will plant additional trees throughout the site.

iv. He requested the hearings officer approve the adjustment to allow the applicant to maintain direct driveway access to Gaarde Street. The Gaarde Street driveway allows traffic generated by the church to disperse onto area streets, reducing the traffic impact on 110<sup>th</sup> Avenue and the adjacent residential neighborhood. The applicant will relocate the existing driveway to the south to improve the intersection spacing on this street. The site does not have enough frontage on Gaarde Street to comply with the 600-foot spacing requirement. The church generates traffic on Sunday mornings. It does not generate traffic during normal peak hours.

v. He requested that the hearings officer modify conditions of approval 13 and 29 to limit the applicant's duty to improve sight distance at the intersection of 110<sup>th</sup> Avenue and Gaarde Street to removal of obstructions on the site or within the public right of way. The applicant has no control over the properties north of the intersection and has no right to remove vegetation or structures on private property that may limit sight distance at this intersection.

vi. He testified that the applicant will treat and detain stormwater within a portion of the site. The applicant will not create a separate tract for the drainage facilities. He requested the hearings officer modify conditions 17 and 21 to that effect.

b. Mr. Jensen testified that there is a question about the depth of the existing sanitary sewer line on the site. The applicant may need to lower the sewer line to serve the proposed expansion, which may impact trees within the sensitive area. The applicant will restore the disturbed area and mitigate any impacts by planting additional vegetation on the site.

i. He testified that the applicant will collect stormwater runoff from impervious areas on the site, treat it in a bio-filtration swale to remove pollutants and discharge it onto the ground outside of the stream buffer, allowing the treated runoff to flow overland to the creek.

ii. He testified that the applicant will plant additional landscaping throughout the site to provide a buffer between the site and adjacent homes. The applicant will replace all of the existing parking lot lights with cut-off fixtures, which limit off-site glare.

c. Mr. Charbonneau testified that all affected intersections, including the proposed Gaarde Street driveway, will continue to operate at Level Of Service ("LOS") B or C with the proposed expansion. Sight distance is more than adequate, based on the 35 mph speed limit on Gaarde.

i. He testified that the Gaarde Street driveway will improve circulation and emergency access on the site. Elimination of the Gaarde Street driveway will create a roughly 700-foot long dead-end. Eliminating the Gaarde Street driveway will increase the traffic impact on the 110<sup>th</sup> Avenue/Gaarde Street intersection and the abutting neighborhood, because all of the traffic from the site will exit onto 110<sup>th</sup> Avenue.



d. Mr. Wilson testified that the applicant will not operate a school on the site. He testified that improvements to Gaarde Street made the existing Gaarde Street driveway unusable by emergency vehicles. The City proposed to "work with" the applicant to fix the problem when they developed the expansion. Now the City is denying any access to Gaarde Street.

4. Bruce Anderson testified in support of the applications. He argued that the applicant should be allowed to provide driveway access to Gaarde Street.

5. Julie Piesker expressed concern that closure of the Gaarde Street access will increase traffic volume and congestion on 110<sup>th</sup> Avenue. She noted that the 110<sup>th</sup> Avenue/Gaarde Street intersection is not signalized. She argued that the applicant could limit use of the Gaarde Street driveway to Sunday only.

6. Greg Herkner expressed concern that expansion of the parking lot will increase the amount of pollution entering the creek near the south boundary of the site. He objected to removal of the existing trees on the site. The trees buffer his home from lights, noise and other impacts generated on the site.

7. City engineer Kim McMillan testified that Gaarde Street is an arterial. The City requires a minimum 600 feet between intersections on arterials to avoid conflicting turn movements and to maintain traffic flow. Arterials are intended to carry through traffic at higher speeds. Additional access points conflict with that purpose and may create a hazard. The applicant has, or will have, two driveways onto 110<sup>th</sup> Avenue, which are adequate to serve the use. Although closure of the Gaarde Street driveway will increase traffic on 110<sup>th</sup> Avenue, traffic is generally limited to Sunday mornings. The City considered allowing a right-in/right-out only access onto Gaarde. However a median would conflict with the driveway serving the development across the street. In addition, such a driveway would still require an adjustment for which the applicant cannot meet the approval criteria. She testified that the City is required to restore existing driveways when it constructs street improvements. However the City can require closure of existing driveways as a condition of approval for new development.

8. City Planning Manager Dick Bewersdorff testified that City capital improvement staff failed to check with City engineering staff before they agreed to work with the applicant to relocate the existing Gaarde Street driveway. The Code does not allow the proposed Gaarde Street access and capital improvement staff have no authority to allow such access.

9. At the end of the hearing, the hearings officer ordered the public record held open for one week for the applicant to submit a closing argument. The record in this case closed at 5 PM on May 2, 2005.

### **C. DISCUSSION**

1. City staff provided basic facts about the site and its vicinity and existing and proposed uses in the Staff Report. Ultimately they recommended that the hearings officer

approve the applications for the conditional use permit and sensitive lands reviews and deny the adjustment application. The applicant accepted most of the findings and recommended conditions with the exceptions described more below. The hearings officer adopts the findings and conclusions in the Staff Report as his own except to the extent they are inconsistent with the findings and discussion in this final order.

2. Regarding the conditional use permit, substantial evidence in the record shows that the proposed use does or can comply with the applicable standards for a conditional use permit. That evidence and those findings were not rebutted. The hearings officer relies on the Staff Report for relevant findings and citation to supporting evidence on these issues. The hearings officer is persuaded that the proposed use will not generate excessive noise, lights, pollution and other effects that cannot be adequately mitigated. These impacts can be accommodated considering the size, shape, location, topography and natural features of the site.

a. Parking, maneuvering and other activities occurring within the parking lot will generate some noise. However such impacts are short term, as vehicles enter and leave the site. In addition, the parking lot will be physically separated from abutting residential properties by the existing vegetative buffer along the stream. The applicant will plant additional vegetation within the buffer and throughout the site, which will enhance the existing buffer. See Plan Sheet L1. Therefore the hearings officer finds that activities in the parking lot are unlikely to have a significant adverse impact on surrounding residents.

b. The hearings officer finds that lights in the parking lot are unlikely to cause glare or adverse visual impacts off-site, because of the distance and vegetation between the light fixtures and residences. Excessive lighting can be addressed by conditions of approval that limit the level of lighting at the property line and require light fixtures to be designed, situated and/or supplemented so they do not cast significant off-sight glare. Also conditions can provide that lights not required for security purposes should be turned off when there are no scheduled activities at the temple. A condition of approval is warranted requiring lighting to be as described herein. It is feasible for the applicant to produce a final site plan showing light fixtures, specifications for fixtures and a lighting plan (including calculated light levels at the property line) to comply with such a condition. For purposes of this decision, lighting does not cause adverse impacts if it casts not more than one foot-candle at the property line or if it is shielded to prevent light from being cast away from the building on which it is situated or toward the east or southeast. Condition of approval 3 should be modified to that effect.

c. The proposed development will create additional paved parking areas located in close proximity to the creek. Stormwater flowing over these paved parking areas will pickup oil, sediment and other pollutants, which could contaminate the creek. However the applicant proposed to collect runoff from impervious areas and discharge it to a biofiltration swale, which will remove much of the pollutants. The applicant will discharge the treated runoff onto the ground, where it will flow over the ground and through additional vegetation, which will filter out additional pollutants before it reaches the creek.

d. There is no substantial evidence in the record that stormwater treatment and erosion control facilities will not function as designed or will cause pollution or sedimentation of adjacent properties or the creek. Neighbors' evidence about pollution from other sites is not relevant to this application. There is no evidence that similar conditions exist on the site or that failures will or are probable on this site.

e. The proposed church expansion will attract additional people to the immediate area, which may lead to an incremental increase the amount of litter, vandalism, and illegal activities. However the hearings officer finds that there is no substantial evidence in the record that members of the church are any more or less likely to engage in nuisance or illegal activities than other people or that such effects will result from the church.

3. The applicant requested an adjustment to the intersection spacing standards of TDC 18.705.030.H(3) to allow driveway access to Gaarde Street.

a. TDC 18.705.030.H(3) requires a minimum 600 feet between driveway and street intersections on arterials such as Gaarde Street. The applicant's existing Gaarde Street access is located roughly 80 feet from the intersection of SW 110<sup>th</sup> Avenue and SW Gaarde Street. The applicant proposed to close the existing access and construct a new driveway onto Gaarde Street located roughly 200 feet south of the 110<sup>th</sup> Avenue/SW Gaarde Street intersection.

b. TDC 18.370.020.C(5) authorizes the hearings officer to approve an adjustment to the intersection spacing requirements if the application complies with the approval criteria of TDC 18.370.020.C(5)(b). In this case the hearings officer finds that the applicant failed to bear the burden of proof that the application complies with TDC 18.370.020.C(5)(b)(2) and (4), because adequate alternative access is available to the site from SW 110<sup>th</sup> Avenue. Therefore the proposed adjustment cannot be approved, because it does not comply with the applicable approval criteria.

c. Prohibiting access to Gaarde Street will increase the traffic volume and congestion on 110<sup>th</sup> Avenue and the proposed site driveways, since all vehicles must use the driveways onto this street to enter and leave the site. The additional traffic and congestion will likely be perceptible to area residents and church members. but it will not exceed the capacity of streets or create a hazard based on Mr. Charbonneau's expert testimony. There is no substantial evidence to the contrary.

i. Mr. Charbonneau testified at the hearing that routing all of the traffic from the site will not exceed the capacity of the 110<sup>th</sup> Avenue/Gaarde Street intersection. In his April 27, 2005 Memorandum he testified that elimination of the Gaarde Street driveway will cause "several detriments..."<sup>2</sup> However he did not find that

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<sup>2</sup> He testified that closure of the Gaarde Street driveway will cause "[a]dditional impacts to the [110<sup>th</sup> Avenue/Gaarde Street] intersection and 110<sup>th</sup> Avenue...longer delays in accessing the site...emergency vehicles will need to undertake a longer route... [and] the residential neighborhood...will experience additional traffic circulation and impacts."

those "detriments" will violate City standards or create a hazard. A mere increase in delay and congestion is not sufficient to support a finding that the alternative access is unavailable.

d. The proposed parking lot design without access to Gaarde Street will create a long dead-end parking lot and vehicle accessway. This dead-end access way could increase emergency response times and restrict emergency vehicle access to certain portions of the site, as Mr. Charbonneau noted in his April 27, 2005 Memorandum. Therefore the hearings officer finds that the applicant should be required to provide an emergency vehicle access to Gaarde Street if required by the Tualatin Valley Fire District. A condition of approval is warranted to that effect.

e. The fact that the Church will generate the majority of its traffic on Sundays, when traffic volumes on Gaarde Street are lower is irrelevant, because it does not relate to the applicable approval criteria in TDC 18.370.020.C(5)(b).

f. The existence of other driveways on Gaarde Street that do not meet the intersection spacing requirements is irrelevant. The City has no authority to close existing nonconforming driveways. However the City can require that the applicant close its existing driveway and bring the site into compliance with current standards as a condition of development approval.

4. The applicant is required to demonstrate that adequate sight distance is available at the intersection of 110<sup>th</sup> Avenue and Gaarde Street, based on the posted speed of 35 mph or the 85<sup>th</sup> percentile, whichever is greater. The applicant is required to modify the intersection if necessary to provide adequate sight distance. See conditions of approval 13 and 29. All of the traffic from the proposed development will travel through this intersection. Therefore the hearings officer finds that this condition is "[n]ecessary to ensure the use is compatible with other use in the vicinity, and that the impact of the proposed use on the surrounding uses and public facilities is minimized." TDC 18.330.030.B. Inadequate sight distance at this intersection will create a hazard and additional traffic generated by the proposed development will exacerbate the hazard. Therefore the applicant should be required to ensure that adequate sight distance is available.

5. The applicant is not required to provide a separate tract for the stormwater facility. The conditions of approval should be modified to that effect.

6. The hearings officer finds that the applicant should be allowed to modify the phasing sequence as proposed at the hearing, provided the applicant demonstrates that adequate parking and landscaping are provided for each phase.

#### **D. CONCLUSIONS**

The hearings officer concludes that the proposed conditional use permit and sensitive lands reviews do or can comply with the applicable approval criteria and standards of the Tigard Community Development Code, provided development that occurs after this decision complies with applicable local, state, and federal laws and with conditions of approval warranted to ensure such compliance occurs. The hearings officer further finds that the applicant failed to bear the burden of proof that the adjustment complies with the applicable approval criteria and must be denied.

## E. DECISION

The hearings officer hereby denies VAR2005-00016 and approves CUP 2004-00005, SLR2005-00005 and SLR2005-00006 (Tigard First Baptist Church) as described herein, subject to the following conditions of approval:

### **CONDITIONS OF APPROVAL**

#### **THE FOLLOWING CONDITIONS SHALL BE SATISFIED PRIOR TO ANY SITE WORK (ISSUANCE OF THE SITE PERMIT).**

**The applicant shall prepare a cover letter and submit it, along with any supporting documents and/or plans that address the following requirements to the CURRENT PLANNING DIVISION, ATTN: MORGAN TRACY 503-639-4171, EXT 2428. The cover letter shall clearly identify where in the submittal the required information is found:**

1. Prior to any site work, the applicant shall revise the landscape plans to show:
  - A. Consistency between the proposed tree removal plan, site plan, and landscape plan with regard to tree removal and on site walkway locations.
  - B. Additional vegetative screening along the west side of the lower parking lot. Any plantings that are proposed in the drainageway buffer will need to be native species appropriate for the area, per CWS standards.
  - C. The extent of landscaping that will be provided for each phase. This is to assist inspection staff in determining when the landscape is complete prior to final inspection for each respective phase. Areas that will be graded or disturbed shall be replanted with groundcover to prevent erosion.
  - D. Trees in the parking lots and street trees as native species. The applicant shall consult with the City Forester to determine the species to be used.
2. Prior to any site work, the applicant shall revise the site/utility plans to show:
  - A. The water quality facility shall be redesigned with input from both the applicant's engineer and arborist, to establish a location that can accommodate the required treatment and detention, and maintain the existing trees.
  - B. Either a) revise the site plan to show no encroachments including structures, grading, or planted vegetation occurring in the existing pathway easement area or b) propose and construct a realigned pathway in a new easement location. If proposing a realignment, the applicant shall be responsible for obtaining any other required approvals, such as sensitive lands review and CWS sign off, if the pathway is in the drainageway area.
  - C. A note indicating the height of the masonry trash enclosure will be 6 feet minimum.
  - D. The parking lot will comply with the Oregon Uniform Building Code by providing seven (7) ADA accessible spaces. This number may be reduced to 6 if the total parking provided is fewer than 200 spaces. The applicant shall additionally demonstrate that the minimum parking is provided for each phase after the appropriate number of ADA spaces are provided.
  - E. The number of bicycle rack spaces to be provided in each location. A minimum of 14 spaces are required for phase 1 and 2, and 28 spaces are required at the completion of Phase 3.
  - F. An area for a loading area. Staff suggests that the area in the Phase 2 parking lot turnaround be shown for this purpose.

- G. The specific profile for the sewer line, as it passes through the sensitive area. The applicant will need to obtain explicit approval from CWS regarding the sewer line work in this area, or else revise their plan such that no work in the buffer is required. If work in the buffer area is allowed, alternate methods of constructing the line will be required to be explored to minimize or eliminate the need for tree removal before the city grants approval to remove these trees. Moreover, prior to removing any trees in the sensitive land area, a tree removal permit shall be obtained from the City.
3. Prior to any site work, the applicant shall submit a detailed lighting plan prepared or approved by a professional engineer or other qualified individual showing that the light fixtures on the site do not cast more than one foot-candle at the property lines abutting the site. Light fixtures shall be designed, situated and/or supplemented to prevent them from causing significant off-site glare. Lights shall comply with crime prevention requirements of the Tigard Development Code (TDC) Section 18.360.090(10).
  4. Prior to any site work, the applicant shall submit a revised tree removal plan that clearly depicts the trees that will be removed and those that will be retained, and includes the following notations:
    - A. The applicant shall notify the City Arborist when tree protection measures are in place so that he may verify that the measures will function properly prior to construction.
    - B. If it is necessary to enter the tree protection zone at any time with equipment (trucks, bulldozers, etc.) the project arborist and City Forester must be notified before any entry occurs. Before entering the TPZ, the project arborist and City Forester shall determine the method by which entry can occur, along with any additional tree protection measures.
  5. Prior to any site work, the applicant shall have the geotech engineer review and approve the construction plans for the City's review and approval.
  6. Prior to any site work, the applicant shall provide evidence of all necessary approvals from US Army Corps of Engineers and the Division of State Lands. If no approvals are required, the applicant shall submit a letter stating the reasons why no approval is required.

**The applicant shall prepare a cover letter and submit it, along with any supporting documents and/or plans that address the following requirements to the ENGINEERING DEPARTMENT, ATTN: KIM MCMILLAN 503-639-4171, EXT 2642. The cover letter shall clearly identify where in the submittal the required information is found:**

7. Prior to issuance of a site permit, a Public Facility Improvement (PFI) permit is required for this project to cover half street improvements and any other work in the public right-of-way. Six (6) sets of detailed public improvement plans shall be submitted for review to the Engineering Department. NOTE: these plans are in addition to any drawings required by the Building Division and should only include sheets relevant to public improvements. Public Facility Improvement (PFI) permit plans shall conform to City of Tigard Public Improvement Design Standards, which are available at City Hall and the City's web page ([www.ci.tigard.or.us](http://www.ci.tigard.or.us)).
8. The PFI permit plan submittal shall include the exact legal name, address and telephone number of the individual or corporate entity who will be designated as the "Permittee", and who will provide the financial assurance for the public

improvements. For example, specify if the entity is a corporation, limited partnership, LLC, etc. Also specify the state within which the entity is incorporated and provide the name of the corporate contact person. Failure to provide accurate information to the Engineering Department will delay processing of project documents.

9. The applicant shall provide a construction vehicle access and parking plan for approval by the City Engineer. The purpose of this plan is for parking and traffic control during the public improvement construction phase. All construction vehicle parking shall be provided on-site. No construction vehicles or equipment will be permitted to park on the adjoining residential public streets. Construction vehicles include the vehicles of any contractor or subcontractor involved in the construction of site improvements or buildings proposed by this application, and shall include the vehicles of all suppliers and employees associated with the project.
10. Additional right-of-way shall be dedicated to the Public along the frontage of Gaarde to increase the right-of-way to 38 feet from the centerline. The description shall be tied to the existing right-of-way centerline. The dedication document shall be on City forms. Instructions are available from the Engineering Department.
11. The applicant shall submit construction plans to the Engineering Department as a part of the Public Facility Improvement permit, which indicate that they will construct a half-street improvement along the frontage of 110<sup>th</sup> Avenue. The improvements adjacent to this site shall include:
  - A. City standard pavement section for a local street from curb to centerline equal to 16 feet;
  - B. pavement tapers needed to tie the new improvement back into the existing edge of pavement shall be built beyond the site frontage;
  - C. concrete curb, or curb and gutter as needed;
  - D. storm drainage, including any off-site storm drainage necessary to convey surface and/or subsurface runoff;
  - E. 5 foot concrete sidewalk with a 5-foot planter strip;
  - F. street trees in the planter strip spaced per TDC requirements;
  - G. street striping;
  - H. streetlight layout by applicant's engineer, to be approved by City Engineer;
  - I. underground utilities;
  - J. street signs (if applicable);
  - K. driveway apron (if applicable); and
  - L. adjustments in vertical and/or horizontal alignment to construct SW 110<sup>th</sup> Avenue in a safe manner, as approved by the Engineering Department.
12. The applicant shall submit construction plans to the Engineering Department as a part of the Public Facility Improvement permit, indicating that they will construct the following frontage improvements along SW Gaarde Street as a part of this project:
  - A. removal of the existing driveway, replacing it with curb and sidewalk;
  - B. street trees spaced per TDC requirements; and
  - C. streetlight layout by applicant's engineer, to be approved by City Engineer.
13. The applicant's engineer shall provide preliminary sight distance certification for the intersection of 110<sup>th</sup> Avenue and Gaarde Street, with a list of improvements required to meet the standard. The engineer shall use the posted speed of 35 mph or the 85<sup>th</sup> percentile, whichever is greater.

14. Sanitary sewer and storm drainage details shall be provided as part of the Public Facility Improvement (PFI) permit plans. A connection permit is required for the reconnection of the sewer lateral to the main after lowering the lateral.
15. The applicant's engineer shall revise stormwater detention and water quality calculations with the actual impervious surface areas as reflected on Sheet A1.
16. Any extension of public water lines shall be shown on the proposed Public Facility Improvement (PFI) permit construction drawings and shall be reviewed and approved by the City's Water Department, as a part of the Engineering Department plan review. **NOTE:** An estimated 12% of the water system costs must be on deposit with the Water Department prior to approval of the PFI permit plans from the Engineering Department and construction of public water lines.
17. The applicant shall provide an on-site water quality facility as required by Clean Water Services Design and Construction Standards (adopted by Resolution and Order No. 00-7). Final plans and calculations shall be submitted to the Engineering Department (Kim McMillan) for review and approval prior to issuance of the site permit. In addition, a proposed maintenance plan shall be submitted along with the plans and calculations for review and approval.
18. An erosion control plan shall be provided as part of the Public Facility Improvement (PFI) permit drawings. The plan shall conform to the "Erosion Prevention and Sediment Control Design and Planning Manual, February 2003 edition."
19. The applicant shall obtain a 1200-C General Permit issued by the City of Tigard pursuant to ORS 468.740 and the Federal Clean Water Act.

**THE FOLLOWING CONDITIONS SHALL BE SATISFIED  
PRIOR TO ISSUANCE OF THE BUILDING PERMIT:**

**The applicant shall prepare a cover letter and submit it, along with any supporting documents and/or plans that address the following requirements to the CURRENT PLANNING DIVISION, ATTN: MORGAN TRACY 503-639-4171, EXT 2428. The cover letter shall clearly identify where in the submittal the required information is found:**

20. Prior to issuance of building permits, the applicant/owner shall record a deed restriction to the effect that any existing tree greater than 12" diameter may be removed only if the tree dies or is hazardous according to a certified arborist. The deed restriction may be removed or will be considered invalid if a tree preserved in accordance with this decision should either die or be removed as a hazardous tree.
21. Prior to any site work, the area of the drainage facility must be clearly identified in the field with permanent fencing so as to insure no grading or material is placed in this area. Any fencing that is damaged during construction must be replaced prior to final building inspection.

**The applicant shall prepare a cover letter and submit it, along with any supporting documents and/or plans that address the following requirements to the ENGINEERING DEPARTMENT, ATTN: KIM MCMILLAN 503-639-4171, EXT 2642. The cover letter shall clearly identify where in the submittal the required information is found:**

22. Prior to issuance of a building permit, the applicant shall pay an addressing fee. (STAFF CONTACT: Shirley Treat, Engineering).



**THE FOLLOWING CONDITIONS SHALL BE SATISFIED  
PRIOR TO A FINAL BUILDING INSPECTION:**

**The applicant shall prepare a cover letter and submit it, along with any supporting documents and/or plans that address the following requirements to the CURRENT PLANNING DIVISION, ATTN: MORGAN TRACY 503-639-4171, EXT 2428. The cover letter shall clearly identify where in the submittal the required information is found:**

23. Prior to the issuance of final occupancy on any building, the applicant must provide City staff with a letter indicating that all of the provisions of Clean Water Services service provider letter (#4097) have been complied with.
24. Prior to the issuance of final occupancy on any building, re-plant any area where vegetation has been removed as a result of grading in conformance with the Clean Water Services Standards.
25. The applicant shall comply with the protection measures prescribed by the City Arborist. The applicant shall provide the City Arborist with a construction sequence including installation and removal of tree protection devices, clearing, grading, and paving.
26. Prior to final building inspection, the Project Arborist shall submit a final certification indicating the elements of the Tree Protection Plan were followed and that all remaining trees on the site are healthy, stable and viable in their modified growing environment.

**The applicant shall prepare a cover letter and submit it, along with any supporting documents and/or plans that address the following requirements to the ENGINEERING DEPARTMENT, ATTN: KIM MCMILLAN 503-639-4171, EXT 2642. The cover letter shall clearly identify where in the submittal the required information is found:**

27. Prior to a final building inspection, the applicant shall complete the required public improvements, obtain conditional acceptance from the City, and provide a one-year maintenance assurance for said improvements.
28. Prior to final building inspection, the applicant shall provide the City with as-built drawings of the public improvements as follows: 1) 3 mil mylar, 2) a diskette of the as-builts in "DWG" format, if available; otherwise "DXF" will be acceptable, and 3) the as-built drawings shall be tied to the City's GPS network. The applicant's engineer shall provide the City with an electronic file with points for each structure (manholes, catch basins, water valves, hydrants and other water system features) in the development, and their respective X and Y State Plane Coordinates, referenced to NAD 83 (91).
29. The applicant's engineer shall provide final sight distance certification for the intersection of 110<sup>th</sup> Avenue/Gaarde Street and the driveways on 110<sup>th</sup> Avenue. Final sight distance certification will be required for the Phase 1 (existing) driveway on 110<sup>th</sup> Avenue and the intersection prior to final building inspection of Phase 1. Final sight distance certification will be required for the Phase 2 (proposed) driveway on 110<sup>th</sup> Avenue prior to final building inspection of Phase 2.
30. The existing driveway on Gaarde shall be removed prior to final inspection on Phase 1.

31. The applicant shall either place the existing overhead utility lines along SW 110<sup>th</sup> Avenue underground as a part of this project, or they shall pay the fee in-lieu of undergrounding. The fee shall be calculated by the frontage of the site that is parallel to the utility lines and will be \$35.00 per lineal foot. If the fee option is chosen, the amount will be \$21,000.00 and it shall be paid prior to final building inspection.
32. To ensure compliance with Clean Water Services design and construction standards, the applicant shall employ the design engineer responsible for the design and specifications of the private water quality facility to perform construction and visual observation of the water quality facility for compliance with the design and specifications. These inspections shall be made at significant stages, and at completion of the construction. Prior to final building inspection, the design engineer shall provide the City of Tigard (Inspection Supervisor) with written confirmation that the water quality facility is in compliance with the design and specifications. Staff Contact: Hap Watkins, Building Division.

**FAILURE TO SATISFY THE CONDITIONS OF APPROVAL WITHIN 36 MONTHS OF THE EFFECTIVE DATE OF THE HEARINGS OFFICER'S DECISION SHALL RENDER THE HEARINGS OFFICER'S DECISION VOID.**

DATED this 12<sup>th</sup> day of May, 2005.



Joe Turner, Esq., AICP  
City of Tigard Land Use Hearings Officer

Packet Materials for the following item:

## Consideration of the Final Orders Regarding the Annexation of the Following Four Properties:

Mountain View Estates Subdivision (ZCA 2004-00004)  
Arlington Heights 3 Subdivision (ZCA 2005-00001)  
Wilson Ridge Subdivision (ZCA 2005-00002)  
Alberta Rider School/Summit Ridge Subdivision (ZCA 2005-00003)

will be available in hard copy on Friday, August 19, 2005 and will  
be delivered to City Council in their Friday mail packet.

Contact the City Recorder's Office at 503-639-4171  
for more information.